

**CONSUMER PROTECTION UNDER THE TANZANIA  
TELECOMMUNICATION LAWS, POLICY AND REGULATIONS: A CASE  
STUDY OF TANZANIA COMMUNICATIONS REGULATORY AUTHORITY**

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LAW IN INFORMATION TECHNOLOGY AND TELECOMMUNICATION  
(LLM IT & T) OF THE OPEN UNIVERSITY OF TANZANIA**

**2011**

**CERTIFICATION**

The undersigned certifies that he has read and hereby recommends for acceptance a dissertation titled, “*Consumer Protection under the Tanzania Telecommunication Laws, Policy and Regulations: A Case Study of Tanzania Communications Regulatory Authority*” in partial fulfillment of the requirement for the Masters of Law in Information Technology and Telecommunications (LL.M IT & T) of the Open University of Tanzania.

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**Prof. Ian Lloyd**

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**Date**

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## **DECLARATION**

I, **Consolatha Moringi Resto**, do hereby declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other University for a similar award or any other award.

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**Signature**

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**Date**

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I feel indebted to all sources from which I have drawn information and persons from whom I have received help and advice in completing this research report.

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## **DEDICATION**

This research report is dedicated to my beloved parents Prof. Resto David Mosha, my father and Mrs Agatha Resto Mosha, my mother for their great support since my childhood up to now, I can not repay them but I will always be grateful to them. Also this research is dedicated to my elder brothers Dominic and Deogratias, my sisters-in-law Deborah, Stella and Maria, my young sister Immaculate and my niece Drusilla who assisted me morally and materially. Last but not least all my tutors for their contributions on the prosperity of my life.

## **ABSTRACT**

This research assessed the Telecommunication Laws, Policy and Regulations in protecting Telecommunication Consumer in Tanzania taking the Tanzania Communications Regulatory Authority as a case study. The aforementioned Regulator above has been selected as it is the overseer of all communication matters in Tanzania. The objective of the study was to assess to identify lacunas/gaps in existing Telecommunication laws, policy and regulations in protection of telecommunication consumers; to assess implication of the gaps in the telecommunication laws, policy and regulations in protection of telecommunication consumers and to recommend ways of improving the telecommunication laws, policy and regulations to protect telecommunication consumers. The research was based on case study approach whereby various reports, literatures and interviews on consumer protection in Telecommunication sector were assessed. During Literature review it was observed that a lot has been written on consumer protection but few studies were done on the assessment of consumer protection in the Telecommunication Laws, Policy and Regulations. Findings revealed that there lacunas/gaps in the existing Telecommunication Laws, policy and Regulations which the telecommunication operators take advantage of and in the end consumers end up carrying the burden of the gaps left in the laws, policy and regulation. It was concluded and recommended that policies, laws and regulations guiding the telecommunication should not only aim at promoting broad, reliable and efficient provisions of telecommunications service in the country but also take into account the issue of consumer protection.

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### ABBREVIATIONS

CABx	- Citizen Advice Bureaux
CISAS	- Communication and Internet Service Adjudication Scheme
DTI	- Department of Trade and Industry
EPOCA	- Electronic and Postal Communications Act
EWURA	- Energy and Waters Utilities Regulatory Authority
FCC	- Fair Competition Commission
FTC	- Fair Competition Tribunal
ICT	- Information and Communication Technology
NCAC	- National Consumer Advocacy Council
NCC	- National Consumer Council
NTP	- National Telecommunication Policy
OECD	- Organization for Economic Co operation and Development
OFCOM	- Office of Communications
OTELo	- Office of the Telecommunications Ombudsman
SUMATRA	- Surface and Marine Transport Regulatory Authority
TCAA	- Tanzania Civil Aviation Authority
TCRA	- Tanzania Communications Regulatory Authority
UK	- United Kingdom
UDCC	- University of Dar es Salaam Computer Centre

## **LIST OF STATUTES**

### **Tanzania**

- Constitution of United Republic of Tanzania, 1977 as amended from time to time
- Electronic and Postal Communications Act, Act No.3 of 2010
- Energy and Water Utilities Regulatory Authority Act, Cap 414 of Laws of Tanzania
- Fair Competition Act, Act No 8 of 2003
- The Control of Price Ordinance, Proclamation No.12 of 1920, Cap 110, Laws of Tanganyika, 1928, Volume II
- Tanzania Communication Act, Act No. 18 of 1993
- Tanzania Communications Regulatory Authority, Act No 12 of 2003
- Universal Communications Service Access Act, Act No 11 of 2006
- Tanzania Communications ( Consumer Protection) Regulation, 2005
- Tanzania Communications (Importation and Distribution) Regulation, 2005
- Tanzania Communications (Installation and Maintenance) Regulation, 2005
- Tanzania Communications (Interconnection) Regulation, 2005
- Tanzania Communications (Quality of Service) Regulation, 2005
- Tanzania Communications (Tariffs) Regulation, 2005
- Tanzania Communications (Type of Approval of Electronic Communications Equipment) Regulation, 2005

### **South Africa**

- Constitution of the Republic of South Africa, Act No 108 of 1996

- Business Act, Act No 71 of 1991
- Standards Act, Act No 29 of 1993

**United Kingdom**

- The Consumer Protection Act, 1987, C. 43
- Communications Act, 2003, C.21
- Enterprise Act, 2002, C.40
- Electronic Communications Act, 2000 C.7

## **CHAPTER ONE**

### **1.0 INTRODUCTION**

The chapter looked on the background of the research topic and prevailing factors that triggered the researcher to conduct research on the particular topic. The chapter guided the researcher to concentrate on the objectives and the significance of the whole study. It commenced with the background of the research problem which explained what the topic is all about so that the reader could be aware of the topic, then the statement of the problem that guided the researcher. Moreover the chapter has the objectives of the study, research questions, significance of the study, scope of the study, and limitation and delimitations of the study.

### **1.1 Background of the Problem**

Telecommunication sector is one among the fastest growing economic sectors in Tanzania recording 21.9% growth in 2009<sup>1</sup>. The survival and growth of this sector has been made possible by the Policy, Laws and Regulations enacted. In 1997 the Government of the United Republic of Tanzania through its Ministry of Communications and Transport made and enacted the National Telecommunication Policy for the period of 1997 through 2020 with the aim and vision of ensuring the accelerated development of an efficient telecommunications network that can provide an

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<sup>1</sup> Behitsa, M.M. and Diyamett, B.D., **Tanzania ICT, Sector performance Review 2009/2010: Towards Evidence-based ICT Policy and Regulation**, Volume Two, Policy Paper 11, 2010

info-communication infrastructure and universal access to telecommunications service by all sectors of national economy and segment of the population<sup>2</sup>.

Different laws have also been enacted to guide this sector in Tanzania, these include the Communications Act<sup>3</sup> which paved way to the Government to liberalize the communications sector, this was followed by the enactment of the Tanzania Communications Regulatory Authority Act<sup>4</sup> which among other things established the Tanzania Communications Regulatory Authority as an independent authority for the regulation and licensing of postal, broadcasting and electronic communications industries in the United Republic of Tanzania. This was then followed by the enactment of the Universal Communications Service Access Act<sup>5</sup> which established the Universal Communications Service Access Fund for enabling accessibility and participation by communications operators in provision of communication services with a view of promoting social, education and economic development of the rural and urban served area and to provide for availability of communication services by establishing a legal framework for universal service providers to meet the communications needs of consumers.

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<sup>2</sup> United Republic of Tanzania **National Telecommunication Policy**, 1997

<sup>3</sup> Act No 18 of 1993 of the United Republic of Tanzania

<sup>4</sup> Act No 12 of 2003 of the United Republic of Tanzania

<sup>5</sup> Act No.11 of 2006 of the United Republic of Tanzania



However some of these legislations have been amended and replaced by the Electronic and Postal Communications Act<sup>6</sup> which among other things aims at keeping abreast with developments in the electronic communications industry; provide for a comprehensive regulatory regime for electronic communications service providers and postal communications service providers, provides for duties of electronic communications and postal licensees, agents and customers, provide for offences relating to electronic communications and postal communications and provide for transitional provisions, consequential amendments and other related matters.

As far as regulations are concerned, there are some regulations which have been enacted as well; these include the Tanzania Communications (Licensing) Regulation, 2005, Tanzania Communications (Installation and maintenance) Regulation, 2005, the Tanzania Communications (Importation and Distribution) Regulations, 2005, and the Tanzania Communications (Quality of service) Regulations 2005.

The enactment of the policy, laws and regulations mentioned above did not only aim at liberalizing the telecommunication sector in Tanzania but also focused on protecting the consumers in the Telecommunication sector, for example the National Telecommunication Policy vision was and still is to accelerate access to present day telecommunication technologies by all sectors of the economy and all segment of the

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<sup>6</sup> Act No 3 of 2010 of the United Republic of Tanzania

population including universal services<sup>7</sup>. Also the Tanzania Communications Regulatory Authority Act<sup>8</sup> which establishes the Tanzania Communications Regulatory Authority under its section 5(b) provides for, the functions of the Authority which among others include protecting the interest of consumers. The same applies to regulations where in 2005 the Tanzania Communications (Consumer Protection) Regulation was enacted with the aim of protecting consumers in communication sector.

Consumer protection is a phenomenon that is much associated with growth of markets as the medium for economic growth which has recently generated a worldwide movement led by multilateral institutions to introduce a systemized competition oversight worldwide. For example in Tanzania some kind of competition oversight was made through the Price Regulation mechanisms inherited from the colonial state<sup>9</sup>.

Competition authorities were set up for the first time to oversee the market roles of the three players; Government, Suppliers and Consumers. Fair competition legislation, the Fair Competition Act<sup>10</sup>, was enacted and among others it established a Fair Competition Commission (FCC), a Fair Competition Tribunal (FCT) and a National Consumer Advocacy Council (NCAC). On the other hand the regulation of natural monopolies was

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<sup>7</sup> United Republic of Tanzania, **National Telecommunication Policy**, 1997

<sup>8</sup> Act No 12 of 2003 of the United Republic of Tanzania

<sup>9</sup> Nditi, Nicholas N.N., **Consumer Protection Law and Practice: Its relevance and Reality in a Developing Economy with Special Reference to Tanzania** [PhD Thesis, 1987, University of Dar es Salaam]

<sup>10</sup> Act No 8 of 2003 of the United Republic of Tanzania

established in transport (SUMATRA), energy (EWURA), communications (TCRA) and air transportation to provide a robust oversight of the market.

However competition oversight alone did not create fair market, and economic justice in terms of giving a fair deal to consumers is not possible without institutionalizing of what one may call for a better word consumer oversight. The statutory form of this kind of oversight is termed Consumer Protection. It is an acknowledged fact that out of all the market players - government, business and consumers it is the consumer group that is largest, but at the same time it is the weakest in terms of its actual market power. Consumers are often uninformed about market conditions and rely on sellers, and possibly government to get correct information about the quality of products offered in the market<sup>11</sup>.

Due to existence of market imperfection, regulatory superintendence and intervention becomes necessary in order to achieve fair competition and at the same time consumer protection. Regulators provide the medium for setting producer standards and codes with the participation of producers and consumer representatives. Once the standards and codes are agreed upon, producers and their organizations are expected to enforce them. The participatory approach of this kind allows self regulation but has a safety net of

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<sup>11</sup> Tenga, R.W., **Consumer Protection Model and the Tanzania Legal Compliance Framework-with some reference to the Communication Sector**, paper presented at the TCRA Competition workshop [Movenpick Hotel] 26<sup>th</sup> June, 2009.

regulator intervention<sup>12</sup> as when one party which in most cases is the producer do not comply then the regulators have the powers to intervene. This is the model of regulation used by Tanzania Communications Regulatory Authority for consumer protection and compliance framework.

Consumer power can not be fully unleashed in the market without an organized consumer base. The Government on its part has set up a mechanism to provide advisory functions on the basis on which consumers' base could be cultivated. This has been done by establishing Consumer Consultative Council in the Tanzania Communications Regulatory Authority as per Section 37 (1) of the Tanzania Communications Regulatory Authority Act<sup>13</sup>.

However despite the enactment of different telecommunication laws which establish council for consumer protection, enactment of National Telecommunication Policy and enactment of different regulations still there has been left lacuna/gap as far as the issue of consumer protection in Telecommunication sector is concerned. For Example on the issue of advertisement and promotions, the law under section 109(a), (b), (i), (ii), (iii), (iv), (v)<sup>14</sup> of the Electronic and Postal Communications Act, provides for advertisement and sponsorship, the provision provides for conducts which are allowed and those which are restricted as far as the issue of advertisement and sponsorship is concerned, however

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<sup>12</sup> DTI 'Comparative Report on Consumer Policy Regimes, (UK, 2003)

<sup>13</sup> Act No 12 of 2003 of the United Republic of Tanzania

<sup>14</sup> Act No.3 of 2010 of the United Republic of Tanzania

the provision left a gap/lacuna as it only covers content service licensees only. Due to this the service providers take advantage of the situation and advertise their promos to the consumers through the consumer cell phones which in the end lead into nuisance. This has also been complained by the famous Tanzania journalist Makwaia wa Kuhenga in the Citizen newspaper of Monday 4 April, 2011 when he said “it is the factor of promotional overkill which is becoming a nuisance to subscribers of these services...”

## **1.2 Statement of the Problem**

Telecommunication sector has played a very important role in the growth of national economies of many countries in the world Tanzania being one of them. It has encouraged investment in the sector and availability of telecommunication services which attract many consumers. Due to this rapid growth the enactment of the laws, policy and regulations was a necessary measure. However as shown in the example above the Tanzania telecommunication laws, policy and regulations left some lacuna as far as the protection of telecommunication consumers is concerned.

The situation created a need for a study to assess the existing Telecommunication Laws, Policy and Regulations, identify the lacunas and assess the implications of the said lacunas on consumer protection and recommend accordingly.

## **1.3 Research Objectives**

The researcher was guided by the following general and specific objectives:

### **1.3.1 General Objectives**

The Main objective of the research was to examine the existing Tanzania Telecommunications laws, policy and regulations.

### **1.3.2 Specific Objectives**

Specific objectives of the research included:

- i) To identify lacunas/gaps in existing Telecommunication laws, policy and regulations in protection of telecommunication consumers.
- ii) To assess implication of the gaps in the telecommunication laws, policy and regulations in protection of telecommunication consumers.
- iii) Recommend ways of improving the telecommunication laws, policy and regulations to protect telecommunication consumers.

### **1.4 Research Questions**

The research sought to answer following general and specific questions:

General: To what extent do the existing Telecommunications law policy and regulations protect the Telecommunications Consumers?

Specific: What are the lacunas/gaps in the existing telecommunications laws, policy and regulations in protection of telecommunication consumers?

What are the implications of the shortcomings in the existing telecommunication laws, policy and regulations in protecting telecommunication consumers?

### **1.5 Significance of the Study**

Conclusion and recommendation drawn from this study include the following significance;

1. Analysis of existing laws, identification of lacunas/gaps and advise to the Tanzania Government and Tanzania Communications Regulatory Authority on better ways to improve the existing laws, policy and regulations in protecting Telecommunication consumers.
2. Findings to be used as a source of reference by the academicians and general public at large.

### **1.6 Scope of the Study**

The study covered analysis of existing Telecommunication laws, policy and regulations in protection of telecommunication consumers and how the said laws, policy and regulations can be improved to protect telecommunication consumers. It covered the telecommunication industry and the Tanzania Communications Regulatory Authority, Headquarters Dar es Salaam as the case study.

### **1.7 Limitation of the Study**

The researcher stipulated some problems which she faced to limit the effectiveness of the research, these include:-

- (i) Non respondent and delay to fill the questionnaires due to tight work schedule by some respondents.

- (ii) The amount of money needed to cover the cost of the study was limited.

### **1.8 Delimitations of the Study**

The study was confined in the Tanzania Communications Regulatory Authority. Data was collected from the staff of the Telecommunication sector unit and the research data collected related to those of Telecommunication Consumer protection.



## **CHAPTER TWO**

### **2.0 LITERATURE REVIEW**

In literature review, the researcher looked at different literatures which were relevant to the study. The chapter covered an overview of Tanzania Communications Regulatory Authority (TCRA), overview of concepts, review of available literature, theories and previous research findings pertaining to the research problem. At the end the literature review the researcher identified the gap between what other authors have explained theoretically and empirically and what has not been explained.

### **2.1 Overview of Tanzania Communication Regulatory Authority**

Tanzania Communications Regulatory Authority (TCRA) established by the Tanzania Communications Regulatory Authority Act no 12 of 2003 is an independent Authority for the postal, broadcasting and electronic communications industries in the United Republic of Tanzania. It merged the former Tanzania Communications Commission and the Tanzania Broadcasting Commission. TCRA became operational on 1<sup>st</sup> November, 2003 and has effectively taken over the functions of the two defunct commissions<sup>15</sup>.

The creation and establishment of the TCRA was for one main duty which was and still is to strive to enhance the welfare of the Tanzania society by:

- (a) promoting effective competition and economic efficiency
- (b) protecting the interest of consumers

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<sup>15</sup> [www.tcra.go.tz/about/profile.php](http://www.tcra.go.tz/about/profile.php) site visited on 28th April, 2011

- (c) protecting the financial viability of regulated services to all consumers
- (d) promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers
- (e) enhancing public knowledge, awareness and understanding of the regulated sectors including
  - (i) the rights and obligations of consumers and regulated suppliers
  - (ii) the ways in which complaints and disputes may be initiated and resolved
  - (iii) the duties, functions and activities of the authority
- (f) Taking into account the need to protect and preserve the environment<sup>16</sup>.

## **2.2 Overview of concepts**

### **2.2.1 Consumer**

According to the Electronic and Postal Communications Act<sup>17</sup>, consumer means any person who uses electronic communication or postal product or services<sup>18</sup>. The definition binds itself only to electronic and postal communications consumers but in wider definition consumer is any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who

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<sup>16</sup> Section 5 (a), (b), (c), (d), (e) (i), (ii), (iii) and (f) of act TCRA Act no 12 Of 2003

<sup>17</sup> Act No.3 of 2010 of the United Republic of Tanzania

<sup>18</sup> Section 3 of Act No.3 of 2010 of the United Republic of Tanzania

purchases any goods or services for the purpose of using them in the production or manufacture of any goods or articles for sale<sup>19</sup>.

Consumers are segmented in different kinds depending on their income, age, gender, residency location, lifestyle, family status and perception of product value<sup>20</sup>. Consumers can be grouped into the following 5 categories: Suspects, Prospects, First time buyers, Repeat buyers and Non-buyers, based upon where they are in the buying process. Suspects are people that aren't even thinking about buying, prospects are those that are thinking about it, first time-buyers have decided they are going to buy, repeat buyers have bought before, and non-buyers are never going to buy<sup>21</sup>. However regardless of their type consumers have their rights as explained below.

Also consumers can be categorized according to the things they buy; there are consumers of goods and there are consumers of services. Starting with the consumers of services these include those who pay for the services they receive for example transport or car repairing services at a garage or telephone services. The consumers of goods are the one who buy things which can be physically verified before buying for example television set, one can verify its functioning before purchasing it.

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<sup>19</sup> Section 2 of Act No. 8 of 2003 of the United Republic of Tanzania

<sup>20</sup> [www.ehow.com/list\\_6737828\\_5-types-consumers\\_.html](http://www.ehow.com/list_6737828_5-types-consumers_.html)

<sup>21</sup> *ibid*

John F. Kennedy once said “If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and national interest suffers.”<sup>22</sup> He thus gave American consumers four basic rights:- the Right to Safety - to be protected against the marketing of goods which are hazardous to health or life; the Right to Choose - to be assured, wherever possible, access to a variety of products and services at competitive prices; and in those industries where competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices; the Right to Information - to be protected against fraudulent, deceitful or grossly misleading information, advertising, labeling, or other practices, and to be given the facts s/he needs to make an informed choice; the Right to be Heard - to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals<sup>23</sup> Considering the importance of Kennedy’s speech to the US Congress on this day, and the resultant law, the Consumers International took a decision in 1982 to observe 15 March as the World Consumer Rights Day from 1983<sup>24</sup>.

In addition to the Kennedy’s right The Consumers International<sup>25</sup>, added the following rights: The right to satisfaction of basic needs to have access to basic, essential goods

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<sup>22</sup> John Kennedy speech when the Bill for Consumer Rights was moved in the US Congress, 1962

<sup>23</sup> [www.cuts-international.org/consumer-rights.htm](http://www.cuts-international.org/consumer-rights.htm)

<sup>24</sup> Ibid

<sup>25</sup> [www.consumerinternational.org/who-we-are/consumer-rights](http://www.consumerinternational.org/who-we-are/consumer-rights)

and services: adequate food, clothing, shelter, health care, education, public utilities, water and sanitation; the right to redress to receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods or unsatisfactory services; the right to consumer education to acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them; and the right to a healthy environment to live and work in an environment which is non-threatening to the well-being of present and future generations.

Turning to telecommunications like any other consumers they too have their rights depending on their countries of their jurisdiction. As far as the Tanzania is concerned, as provided by TCRA<sup>26</sup> these rights include;-

**Access;** A consumer has a right to have access to basic communications services at reasonable prices. It is a fundamental human right to have access to communications services at an affordable price particularly the basic services like telephone and postal. Government and subsequently TCRA have a responsibility to ensure that services are made available to all persons by adopting the right policies and that the licenses issued ensure the necessary roll out of services to all underserved areas and populations.

**Information;** A consumer has a right to full pre-contractual information that is clear (understandable), helpful, adequate and accurate on the services and choices offered by a

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<sup>26</sup> [www.tcra.go.tz/customer/ConsumerRights.pdf](http://www.tcra.go.tz/customer/ConsumerRights.pdf)

service provider/operator to facilitate the making of an informed choice. Such information should include a specification of what is and is not included in the price quoted as well as a clear statement on the quality of service to be provided. TCRA has made it a requirement on all service providers/operators that these conditions of contract be contained in a service agreement that should be presented to each customer before the customer utilizes the service provider's/operator's services.

Consumers have a right to receive information assistance to assist them in use of services. This is particularly true among telecommunication operators who are required to provide directory assistance to customers.

Consumers have a right to have access to sector governing information. The information referred to in this case is information on issues such as governing policies and legislation as these affect the end service available to the consumers.

Consumers have a right to have comparative information. This information is provided to assist them in making choices between different service providers/operators, services and equipment.

**Quality of Service;** Consumers have a right to receive a service with a quality that reflects the cost of the service (Value for money). Consumers should receive services that are reflective of the concept of value for money. TCRA has developed service

quality guidelines that are required of each of the respective service provider/operator in the service agreement. Consumers have a right to receive the level of quality of service that is quoted or stated by the service provider/operator in the service agreement. It has already been pointed out that the standard of service associated with the quoted prices/changes should be made available to the customer prior to use of services.

**Fairness;** A consumer has a right to fair treatment without undue discrimination from another consumer. Such discrimination can take the form of denial of access to services or provision of different quality of service to different customers paying the same amount of money. TCRA requires that denial of access to services provided by an operator/service provider should only be due to delinquency of payment of dues or for non compliance with the terms and conditions of the service provider's/operator's service Agreement or for any other just cause. This fairness right is also extended to consider for treatment among groups of consumers. Consumers have a right to fair terms of service. This looks at the terms and conditions stipulated by the service provider/operator in the service agreement as basis of providing service. These should be fair in expectations as well as requirements.

**Complaint;** A consumer has a right to complain about quality, delay, quantity and tariff with regard to the nature of the communication service provided. A consumer is expected to utilize or consume services knowing on what terms the service is being provided. If these terms are not met, a consumer can complain.

**Redress;** A consumer has a right to an effective system for handling of complaints. Each service provider/operator is required by TCRA to set up a mechanism of resolving questions regarding services and conflicts with customers. If a complaint is not resolved satisfactorily by the service provider/operator, the consumer can advance his/her complaint to TCRA.

**Safety and security;** Consumers have a right to be provided services that are safe and secure. A service provider/operator must ensure that all his/her equipment meets health safety requirements before use by consumers and should regularly be checked to maintain this safety. Any known health risks should be communicated to any intending or exiting customer. The use of the facilities or services provided should not leave a consumer at any risk whether health or otherwise unless such risk is a result of malpractice on the part of the consumer.

**Privacy;** Every Consumer has a Right to Privacy. TCRA has placed a confidentiality requirement on service providers/operators to ensure and maintain confidentiality of the content of all communications whether data or any information that the service provider/operator may obtain as a result of serving a customer. This cannot be disclosed to any third party without the Authority's written consent or by order of competent court of law.



**Consumer Education;** Consumers have a right to be educated on services being offered to them. This education is necessary to provide them with knowledge and skills that enable them to be informed consumers.

**Notification of termination of service;** Consumers have the right to a notification of termination of service particularly that of a basic service or Internet access. For example the Uganda national operators (Uganda Telecom Limited, Uganda Post Limited and MTN Uganda Limited as well as Celtel Uganda) are not permitted to cease operating during their license term. TCRA however requires other providers of services such as Internet access service to provide prior notification to the customers and the general public of an intention to cease providing a service.

**Representation;** Consumers have a right to make representations to those delivering, regulating or governing the communications services on matters pertaining to the services offered to them and other consumer preference. It is for this reason that the UDCC regularly engages in public consultations, inviting comment/input from the public.

**Billing Information;** Consumers have a right to access billing information. When a consumer is not happy with his/her bills, he/she can follow it up with the service provider/operator to discuss the details of his/her bill

### 2.2.2 Telecommunication

According to the Newton's Telecom Dictionary telecommunication is the art and science of 'communicating' over a distance by telephone, telegraph and radio. The transmission, reception and the switching of signals, such as electrical or optical, by wire, fibre, or electromagnetic (i.e. through-the-air) means<sup>27</sup>.

Also in the Cambridge Advanced Learner's Dictionary telecommunications has been defined as the sending and receiving of messages over distance, especially by telephone, radio and television<sup>28</sup>. In many parts of the world the telecommunication sector is governed by different laws, policies and regulations. This is also the case in Tanzania where there are different laws, policy and regulations which guide the sector, to mention a few are the Tanzania Communications Regulatory Authority Act<sup>29</sup>, the National Telecommunications Policy of 1997, and the Tanzania Communications (Consumer Protection) Regulations of 2005.

In different countries in the world telecommunication sector is guided by the telecommunication regulators. Telecommunication regulator is a body that controls the behavior of telecommunication companies so as to maintain competition in telecommunication market and preventing undesirable outcomes in the telecommunication sector. There are various types of regulators; there are Single-Headed

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<sup>27</sup> H Newton, **Newton's Telecom Dictionary**, 18<sup>th</sup> Edition (2002) 733

<sup>28</sup> **Cambridge Advance Learner's Dictionary**, 3<sup>rd</sup> Edition, 2008, Cambridge University Press

<sup>29</sup> Act No.12 of 2003 of the United Republic of Tanzania

Regulators and Collegial Commissions. Different regulatory authorities have adopted models which accord with their legal and political institutional framework. Countries such as the United Kingdom, adopted the single- headed regulatory model when Oftel was established in 1984. In this model, the Director assumes chief responsibility for the functioning of the regulatory agency, and is assisted by professional support staff, and possibly consultants. Other countries opted to establish collegial bodies, comprising of several members referred to as councilors or commissioners as in the case of South Africa, Egypt and Malawi.

In case of Tanzania there is telecommunication regulatory authority known as Tanzania Communications Regulatory Authority as discussed above. These regulatory authorities have different objectives depending on their jurisdiction of the countries in which they are; however in general telecommunication regulators have the following objectives as discussed hereunder:

Regulators monitor competition in telecommunication sector. This has been achieved by imposing rules and policies to enhance competition. Competition policy provides a set of tools to promote sustainable competition and to preserve a market environment in which such competition can flourish. Competition policy may be implemented through general competition laws or through competition enhancing rules in specific sectors. Such rules might include general prohibitions on anti-competitive behaviour and mergers or acquisitions that would reduce competition or specific rules designed to encourage

competition in the sectors, such as interconnection requirements or unbundling policies. Competition laws aim to promote efficient competition by penalizing or undoing conduct that reduces competition in a market. Competition laws generally include provisions to prevent competing firms from banding together to increase prices or reduce quantities of goods and services, or to exclude other firms from a market, to prevent firms with a dominant position from using their market power to exclude competitors from the market, or otherwise reduce competition and to stop mergers or acquisitions that would reduce competition<sup>30</sup>.

Regulators make sure that there is availability of Telecommunication services to everyone regardless of where the person is. This has been achieved by imposing the universal service obligation to service providers. Universal Service refers to service at the individual or household level, for example, typically a telephone in each home<sup>31</sup>. As telecommunication services are liberalized, there is a potential risk that uneconomic services which are nevertheless socially essential will cease to be provided. In order to ensure that such services are maintained in an era of free competition, they designated Universal Services and telecommunications operators will be required to guarantee their provision<sup>32</sup>.

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<sup>30</sup> [www.ictregulationtoolkit.org/en/section.1665.html](http://www.ictregulationtoolkit.org/en/section.1665.html)

<sup>31</sup> [www.ictregulationtoolkit.org/en/section.3127.html](http://www.ictregulationtoolkit.org/en/section.3127.html)

<sup>32</sup> [www.tiresias.org](http://www.tiresias.org)

As an oversight bodies, the regulators, oversee the telecommunication sector and make sure that the operators are adhering to the rules and regulations set by them. Regulators have been given powers to give or deny licences to operators, also they have the powers to revoke the licence of a certain operator if the operator is not operating the way it is required to operate. For example the Tanzania Communication Regulatory Authority has the power to issue, cancel or renew licence of Telecommunication operators<sup>33</sup>. Also as an oversight body the Tanzania Communication Regulatory Authority has to strive to enhance the welfare of the Tanzania Society<sup>34</sup>

In spite of their objectives the telecommunication regulators have been given powers depending on the jurisdiction of the countries. In the case of Tanzania the TCRA has been given power to make policies and rules and to make sure that the Telecommunication operators are aware of the rules and policies and are adhering to these rules. For Example Section 6(1)(v) of the Tanzania Communications Regulatory Authority Act provides for the function of the authority and among the functions is to make rules for carrying out the purposes and provisions of TCRA Act and the sector legislation. Section 23(4) (b) of the same Act further provides that the Authority shall cause to be published in the Gazette as soon as may be practicable any Rules or Regulations. It is through this power that TCRA makes rules and regulations on regarding consumer protection.

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<sup>33</sup> Section 6(1)(i) of the Tanzania Communications Regulatory Authority Act. Act No 12 of 2003

<sup>34</sup> Section 5 of the Tanzania Communications Regulatory Authority Act. Act No 12 of 2003

### 2.2.3 Consumer Protection

Consumer protection is the process of defending consumers against unscrupulous practices by producers and sellers<sup>35</sup>. Different countries have enacted different laws to protect their consumer, for instance in United Kingdom there is a Consumer Protection Act<sup>36</sup> which among other things make provision with respect to the liability of persons for damages caused by defective products. Consumer protection laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves<sup>37</sup>.

### 2.3 Consumer Protection at International Level

Before World War 1, the jurisprudence on consumer protection in the world was minimal, hence lack of legislation to protect consumers<sup>38</sup>. Soon after movements for the supplement of consumer remedy became recognizable this included the enactment of different international instruments which protect consumers. These instruments include the United Nations Guidelines for Consumer Protection<sup>39</sup>.

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<sup>35</sup> [http://www.thetimes100.co.uk/downloads/theory/consumer\\_protection.pdf](http://www.thetimes100.co.uk/downloads/theory/consumer_protection.pdf) site visited on 28th April, 2011

<sup>36</sup> The Consumer Protection Act, 1987 c. 43 of the United Kingdom

<sup>37</sup> [http://en.wikipedia.org/wiki/consumer\\_protection](http://en.wikipedia.org/wiki/consumer_protection) site visited on 28th April, 2011

<sup>38</sup> M. Jasper, “*Consumer Rights Law*”, Oceana’s Law for the layperson, New York Oxford University Press, (2008) pg 1

<sup>39</sup> [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf) site visited on 28th April, 2011

United Nations Guidelines for Consumer Protection took into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection. Its main objectives<sup>40</sup> are:-

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices
- (h) To promote sustainable consumption.

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<sup>40</sup> [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf)

Another international instrument is the OECD guidelines for Consumer Protection in the context of Electronic Commerce. These guidelines mainly focus on protection of e-commerce consumers; for example on the issue of transparency the guidelines require Consumers who participate in electronic commerce to be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce<sup>41</sup>.

The purpose of these guidelines (OECD Guidelines) is to provide both a framework and a set of principles to assist Governments in reviewing, formulating and implementing consumer and law enforcement policies, practices, and regulations for effective consumer protection in the context of electronic commerce; to assist business associations, consumer groups and self-regulatory bodies, by providing guidance as to the core characteristics of effective consumer protection in the context of electronic commerce; and to assist Individual businesses and consumers engaged in electronic commerce, by providing clear guidance as to the core characteristics of information disclosure and fair business practices that businesses should provide and consumers should expect in the context of electronic commerce<sup>42</sup>

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<sup>41</sup> Part two of Guidelines for Consumer Protection in the context of Electronic Commerce (2000) OECD Publishing.

<sup>42</sup> [www.oecd.org/dataoecd/18/13/34023235.pdf](http://www.oecd.org/dataoecd/18/13/34023235.pdf) site visited on 10/08/2011



Also the European Union through its Data Protection Directive<sup>43</sup> harmonized data protection law within the community (European community), which aims at aiding the development of the European inner market while simultaneously improving consumer protection and most important feature is the restrictions it places on transfers of personal information to countries outside the EU. The restrictions are necessary to ensure that the purposes of the Directive cannot be undermined by moving data processing operations outside of the community as provided under Article 25(1) of the Directive.

The directive further provides for the principles of data protection. The principles aim at making sure that consumers' data are well protected. Through these principles personal data shall be processed fairly and lawfully and, in particular; personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes; personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed; personal data shall be accurate and, where necessary, kept up to date; personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes; personal data shall be processed in accordance with the rights of another; appropriate technical and organizational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data and personal data shall not

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<sup>43</sup> EC, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, [1995] O.J. L. 281/31

be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data. These are provided under Articles 6 and Article 25 of the Directive.

In other jurisdictions for example in a country like South Africa consumer protection provision are scattered into different statutes. First and foremost is the ground norm of the country which provides for the bill of rights inter alia, such as right to safety under Section 12<sup>44</sup> and also Section 29 providing for the right to be informed. Therefore consumers in South Africa have the right to safe goods and get the required information about a product before making the decision of purchasing. Sections 24 and 34 provide for the right to healthy environment and the right to redress<sup>45</sup>.

Other Acts which adhere to consumer protection in South Africa are the Business Act<sup>46</sup> which makes mandatory requirements for business to have a license, the Standard Act<sup>47</sup> which promotes the standards of goods and services offered to consumers. Also in the year 2007 South Africa made a remarkable change on the consumer protection where there was approval of the 3<sup>rd</sup> draft consumer protection bill by the cabinet<sup>48</sup>. The bill has peculiarly feature imposing liability to the manufacture, retailer or distributor on

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<sup>44</sup> Constitution of the United Republic of South Africa, Act no 108 of 1996

<sup>45</sup> Ibid

<sup>46</sup> Act No. 71 of 1991

<sup>47</sup> Act No. 29 of 1993

<sup>48</sup> MARSH, International Bulletin "New consumer protection bill in South Africa" July 2008 at [http://global.marsh.dppl.com/documents/Internationalbriefings/Consumer\\_Protection\\_Bill\\_in\\_South\\_Africa.pdf](http://global.marsh.dppl.com/documents/Internationalbriefings/Consumer_Protection_Bill_in_South_Africa.pdf)

consequential damage suffered by a consumer as a result of their product. Also under its section 50, there was a fundamental requirement that “all agreements for consumers must be in plain language”.

These International instruments for consumer protection have one way or the other influenced the consumer protection in different countries Tanzania being one of them. For example by virtue of being the member states of United Nations, the UN Guidelines for Consumer Protection have influenced the incorporation of consumer protection elements in many laws in Tanzania which also include Telecommunication laws. For example guideline 3(e)<sup>49</sup> provides for availability of effective consumer redress, the same has also been provided for under the Electronic and Postal Communications Act where a licensee holding license to provide network services is obliged to operator assistance service, enabling any subscriber to obtain assistance regarding, amongst other remedying faults<sup>50</sup>.

## **2.4 Consumer Protection in Tanzania**

Before getting into consumer protection at present time in Tanzania, It is better to look at the history of how consumer protection came into being in Tanzania. Below is the brief history of consumer protection in Tanzania.

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<sup>49</sup> UN Guidelines for consumer Protection available at [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf)

<sup>50</sup> Section 18(1) (c) of Act No 3 of 2010

The evolution of Consumer protection in Tanzania can be categorized in four phrases; these are during the pre-colonial era, colonial era, independence era toward Arusha declaration and Post Arusha declaration era.

In the pre colonial era Tanzanian societies had not developed the concept of consumer protection not only in the case of exchange of food stuff but also in what may be termed as commodity trade in particular trade in “cottage industries” goods. This was so because of the then prevailing practices such as mutual aid which was hinged on reciprocity<sup>51</sup>. The practices were dictated by the very low level of development of commodity production in those earlier communities.

During the colonial era (Germany 1896-1919, British 1920-1961), most of the goods for non natives were imported. With passage of time, local industries were established. Consumers of both imported and local goods faced some problems (which include cheating and falsification of goods) which necessitated importation of capitalist concept of consumer protection and relevant laws and practices<sup>52</sup>.

However it is during the British colonial period (1920-1961) in Tanganyika which may be said to constitute an amalgam of archaic and modern consumer laws and practices. These laws and practices were described as archaic in the sense that they were pre

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<sup>51</sup> N.N.N Nditi “Consumer Protection Law and Practice: Its relevance and reality in a developing economy with Reference to Tanzania” PhD Thesis, University of Dar es Salaam, 1987.

<sup>52</sup> ibid

capitalist and were rarely, if at all, used because the level of development of the capitalist economy and the legal consciousness of the majority of the population was low. Example of these laws include proclaimed the Control of Prices Ordinance<sup>53</sup> which was enacted on

5<sup>th</sup> March, 1920. The ordinance made it an offence to either sell or offer for sale or buy or offer to buy any price-controlled articles at a price exceeding the fixed maximum price<sup>54</sup>.

In 1961 Tanganyika got its independence from the British rule; however this independence was said to be more of a political independence than economic independence as after independence Tanganyika economy remained an appendage of the British and West European capitalist imperial economies. The consumers both in pre-independence and post independence Tanganyika were subject to the unbending laws of capital now embraced by the new administration. From 1961-1966 the consumers did not get much consideration and protection. They were left at the mercy of capital. This went on up to 1967 when the Arusha declaration was proclaimed. The declaration introduced the Ujamaa-Socialism in Tanzania which broadly reflects Nyerere's philosophy of man-centralism which according to him all social, economic, political and legal activities have to have man as the beneficiary<sup>55</sup>.

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<sup>53</sup> Proclamation No. 12 of 1920 Cap 110 Laws of Tanganyika, 1928 Volume II

<sup>54</sup> Section 3, 4 and 9 of Cap 110 Laws of Tanganyika, 1928 Volume II

<sup>55</sup> N.N.N Nditi "Consumer Protection Law and Practice: Its relevance and reality in a developing economy with Reference to Tanzania" PhD Thesis, University of Dar es Salaam, 1987.

After the Arusha declaration in Tanzania, consumer was accorded protection through government policies and by the legal, judicial and administrative arms of the state which lead to enactment of consumer protection laws in different sectors.

Starting with the Constitution of the United Republic of Tanzania which is the mother law of the country, Part III Article 30 (2 (b) of the Constitution provides for “defense, public safety, public morality, public order, and public health”<sup>56</sup>. Also Part III, Para 15 to 21 of the Fair Competition Act, 2003<sup>57</sup> stipulates that misleading or deceptive conducts against consumers shall be prohibited and part VIII para 48 stipulates on the necessity of product safety and product information to consumers. This provision is complimented with the constitution Article 18 (2) “provides for the freedom of expression”<sup>58</sup> that citizens have the right to be informed on all state matters that have an impact into their lives. *Part IV para 22* of the Act<sup>59</sup> provides for the right to redress, consumers have the right to compensation for unsatisfactory goods or services, subject to hearing.

Also the government enacted other sectoral regulations for the promotion of consumer rights; inter alia these acts which include EWURA Act, 2001 which provide for the energy, water and utilities. These also include the SUMATRA Act, 2001 which provides for the transport sectoral, The Tanzania Communication Regulatory Authority Act,

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<sup>56</sup> United Republic of Tanzania, Constitution of the United Republic of Tanzania 1977 (as amended from time to time)

<sup>57</sup> Act No 8 of 2003

<sup>58</sup> United Republic of Tanzania, Constitution of the United Republic of Tanzania 1977 (as amended from time to time)

<sup>59</sup> Fair Competition Act No. 8 of 2003

2003, Tanzania food and drug Authority Act 2003 and Tanzania Bureau of Standard Act, 1975 all of which aim at consumers' satisfaction need.

However having good laws is one thing and implementation is another thing, for proper implementation. For example there are some cases which involve the infringement of consumer protection. this can be seen in the case of *Ministry of industry and trade v. Bonite Bottlers Ltd*<sup>60</sup>, the matter was heard at the Trade practice commission. Bonite Bottlers the manufacturers of Kilimanjaro drinking water were sued for putting a false advertisement deceiving the public that the water is from a "natural spring" while in actual terms their water was from a dripped well, the commissioner ordered Bonite Bottles to change their advert. The advert was changed to "pure drinking water".

## **2.5 Telecommunication Consumer Protection in Tanzania**

It is important that the telecommunications legal and regulatory framework create an environment that promotes public interest, confidence and participation in the sector. Most countries have done so by enacting consumer provisions in telecommunications legislation, such as number portability, quality of service and universal service. Many countries also have general consumer laws to protect consumer interests in the purchase of goods and services, which also affects telecommunications.

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<sup>60</sup> The matter was decided on 1<sup>st</sup> June, 1999 by the Trade Practice Commissioner

In Tanzania there are several pieces of legislations, regulations and policies protecting telecommunication consumers, these include the National Telecommunication Policy<sup>61</sup>, National Information and Communications Technologies Policy<sup>62</sup>, the Tanzania Communications Regulatory Authority Act<sup>63</sup>, the Universal Communications Service Access Act<sup>64</sup>, the Electronic and Postal Communications Act<sup>65</sup>, Tanzania Communications (Licensing) Regulation, 2005, Tanzania Communications (Installation and maintenance) Regulation, 2005, The Tanzania Communications (Importation and Distribution) Regulations, 2005, and The Tanzania Communications (Quality of service) Regulations 2005 to mention a few.

Starting with the National Telecommunication Policy of 1997; the policy has set out its strategy, vision and objectives which are explained herein below:-

### **Vision**

The telecommunications sector vision is for the accelerated development of an efficient telecommunication network that can provide a national information communication infrastructure and access to present day telecommunication technologies by all sectors of the economy and all segments of the population, including universal access.

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<sup>61</sup> The United Republic of Tanzania National Telecommunication Policy, 1997

<sup>62</sup> The United Republic of Tanzania National Information and Communications Technologies Policy, 2003

<sup>63</sup> Act No 12 of 2003 of the United Republic of Tanzania

<sup>64</sup> Act No.11 of 2006 of the United Republic of Tanzania

<sup>65</sup> Act No 3 of 2010 of the United Republic of Tanzania



### **Objectives**

The general telecommunication policy objective is to ensure that telecommunication services are provided in a liberalized and competitive manner. The main telecommunication objectives are:-

- i) To ensure provision of adequate, sustainable and efficient telecommunication services in all sectors of the economy.
- ii) To put in place a reliable telecommunications infrastructure and ensure service inter-connectivity nationally and internationally.

### **Target**

The overall national target for the sector is to optimize its contribution to the development of the Tanzania economy as a whole by ensuring availability of efficient, reliable and affordable telecommunication services throughout the country.

The specific target is to achieve a telephone density of 6 telephones per 100 population over the plan period<sup>66</sup>.

The policy further provides for the definition of the Regulator as well as providing the functions of the regulator which according to the policy is an independent quasi government body whose functions are to regulate and monitor the telecommunication sector and foster competition through licensing of operators and franchise holders.

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<sup>66</sup> The United Republic of Tanzania **National Telecommunication Policy** of 1997

It further provides for the provisions for the Telecommunications Operators where their role and responsibilities are defined. The role of the telecommunication operators as provided in the policy are to build and maintain the network infrastructure, provide basic telephony, data communications, mobile cellular, radio paging and private telecommunication services, and provide new services resulting from technological development.

The policy also provides for the legal framework which ensures to put in place a clear and transparent legal and regulatory framework that will ensure that the rights of sector entrepreneur providing telecommunication services are protected and to promote private sector efforts to develop telecommunication system and services in accordance with the accepted international practices.

The National Telecommunication policy has addressed several issues such as the development of the telecommunication sector and assurance that telecommunication services are provided in a liberized and competitive manner. However the policy is unsatisfactory in addressing the issues of telecommunication consumer protection. No clear strategies and objectives are provided under this area.

Another policy is the National Information and Communications Technologies Policy of 2003. According to the policy Information and Communications Technologies (ICT) advances since the end of the 20<sup>th</sup> Century have led to multiple convergences of content,

computing, telecommunications and broadcasting. They have brought about changes in other areas, particularly in knowledge management and human resources development<sup>67</sup>.

The policy has articulated ten main focus areas in harnessing ICT in Tanzania which include strategic ICT leadership; ICT infrastructure; ICT Industry; Human Capital; Legal and Regulatory Framework; Productive Sectors; Service Sectors; Public Service; Local Content; and Universal Access<sup>68</sup>. Also it has the following objectives, vision and mission:

### **Objectives**

The National ICT Policy's broad objectives are to:

- i) Provide a national framework that will enable ICT to contribute towards achieving national development goals; and
- ii) Transform Tanzania into a knowledge-based society through the application of ICT<sup>69</sup>.

### **Vision**

The National ICT Policy is aligned to the following vision statement:

“Tanzania to become a hub of ICT Infrastructure and ICT solutions that enhance sustainable socio-economic development and accelerated poverty reduction both nationally and globally.”<sup>70</sup>

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<sup>67</sup> The United Republic of Tanzania National Information and Communications Technologies Policy, 2003

<sup>68</sup> The United Republic of Tanzania National Information and Communications Technologies Policy, 2003

<sup>69</sup> *ibid*

### **Mission**

The overall mission of this Policy is:

“To enhance nation-wide economic growth and social progress by encouraging beneficial ICT activities in all sectors through providing a conducive framework for investments in capacity building and in promoting multi-layered co-operation and knowledge sharing locally as well as globally.”<sup>71</sup>

However like the National Telecommunication Policy, The National ICT Policy has also tried to cover a wide scope of things but there is no where in the policy where consumer protection of ICT consumers which include telecommunication consumers has been given priority or emphasis. With the on going developments and liberalization of ICT there is a need for incorporation of consumer protection matters in the National ICT policy.

Turning to telecommunication laws and regulations, the sector has been and still is guided by variety of telecommunication laws and regulations; however only few laws and regulations provide for consumer protection. These include the following:-

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<sup>70</sup> ibid

<sup>71</sup> ibid

Tanzania Communications Regulatory Authority Act<sup>72</sup>, the act establishes the Tanzania Communication Regulatory authority and also provide for the duties and functions of the regulatory authority<sup>73</sup>. Though the Act provides for protecting of consumers interest<sup>74</sup> there is nowhere in the act where it is clearly stated what consumer interests are to be specifically protected by the regulatory authority and the Act itself.

Also the TCRA Act further provides for the way the TCRA should be handling consumer complaints. Though some of the provisions in the said Act are amended, the Act sets out procedure and machinery for receipt of complaints from the public and their investigation by TCRA<sup>75</sup>. This process culminates in appeals to the Fair Competition Tribunal within twenty one days<sup>76</sup>. The resolution of complaints and disputes is one of the important elements in consumer protection. However TCRA being an independent quasi government body whose funds and finances depend on the government, there is likely hood of it giving very little attention on the protection of consumers as the government focus is mainly to enlarge the market so as to increase the national economy, that being the case much protection will be given to the investors in the market rather than the consumers.

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<sup>72</sup> Act No 12 of 2003 of the United Republic of Tanzania

<sup>73</sup> Ibid, ss.4(1), 5(a)-(f) and 6(1)(a)-(i)

<sup>74</sup> Ibid s. 5(b)

<sup>75</sup> Ibid, Part VIII

<sup>76</sup> Ibid, S.42(2)

Generally the TCRA Act has several provisions aiming at protecting telecommunication consumers. However the Act does not satisfactorily protect the telecommunication consumers as it does not cover all matters of telecommunication consumer protection.

The Electronic and Postal Communication Act<sup>77</sup>; this is a new act which was enacted in 2010, it introduced some new things as far as the telecommunication matters are concerned and also it amended some provisions on the TCRA Act<sup>78</sup>; among the sections amended entirely is section 41 of the TCRA Act by giving more powers to the authority in giving orders when making a decision in a dispute.

EPOCA Act also amended Section 42 by adding the sub section (5) to section 42 which gives effectiveness to the decision made by the TCRA, regardless of whether or not the aggrieved party institutes or intends to institute an action in a court of law, quasi judicial body or makes any further representations to the Authority after the decision is made<sup>79</sup>. This interferes with the judicial system of the country as the powers of the judiciary are being interfered by the executive and also it not a good consumer protection mechanism especially to the consumer who is aggrieved.

The new Act (EPOCA) has tried to cover many things regarding consumer protection in the telecommunication sector, it provides for new offences and penalties thereof. It has

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<sup>77</sup> Act No.3 of 2010 of the United Republic of Tanzania

<sup>78</sup> Act No 12 of 2003

<sup>79</sup> S.178 of Act No.3 of 2010

covered matters with regard to advertisements where the authority has been given power to make rules pertaining to the advertisement and sponsorship<sup>80</sup>. However the Act left a lacuna on the issue of advertisement as the provision only covers and restricts the content service licensees excluding the telecommunication operators. Due to this gap the telecommunication operators are advertising and promoting their products countlessly through the consumer's cell phone hence leading to nuisance to consumer.

Also the EPOCA Act under its section 18(3)<sup>81</sup> provides that A licensee of a network service shall provide the following essential and emergency services free-of-charge (a) emergency service; (b) operator assistance for remedying faults, (c) customer assistance; (d) crime stoppers; (e) child help line; (f) health help line; (g) anti-corruption services; (h) fire services (i) ambulance services; and (j) any other services relating to human safety and life. The provision of the law above has the general restriction; it does not clearly state the extent to which the restriction applies and due to this the telecommunication operators take advantage of the gap and charge the consumers after the first dial. The telecommunication operators have created a mechanism of charging the consumer when they want to get assistance from their service provider by giving instructions of how to get access to customer care service. The mechanism of accessing the customer care service is not free of charge contrary to what the law provides.

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<sup>80</sup> Ss.109 of Act No.3 of 2010

<sup>81</sup> Act No. 3 of 2010

Coming to telecommunication regulations, the telecommunication sector has many regulations. There are several regulations which provide for consumer protection. These include the following:-

The Communication (Consumer Protection) Regulation, 2005, provides for several matters regarding consumers such as services during emergency<sup>82</sup>, matters of confidentiality<sup>83</sup>, information to the consumers<sup>84</sup> and complaints handling procedures<sup>85</sup>.

Also the regulation requires a licensee within six months from the date of the grant of the license to establish a system of outage credits to be given to a customer. This outage credit system is to be submitted to the Authority for its approval and modification and shall become part of the contract of service<sup>86</sup>.

According to the regulation each licensee is required to establish a customer care system within which customers can make inquiries and complaints<sup>87</sup>. Telecommunication operators are required to establish the customer care system within six months from the date of getting a license<sup>88</sup>. However the regulation is silent on the issue of free of charge calls to customer care unit of the telecommunication service providers thus making the

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<sup>82</sup> Regulation 13 of the Tanzania Communication (Consumer Protection) Regulation, 2005

<sup>83</sup> Regulation 12, *ibid*

<sup>84</sup> Regulation 8(1) and (2), *ibid*

<sup>85</sup> Regulation 6(1) –(8), *ibid*

<sup>86</sup> Regulation 10, *ibid*

<sup>87</sup> Regulation 4(1), *ibid*

<sup>88</sup> Regulation 4(2) , *ibid*



telecommunication operators to be able to take advantage of the gap left in the EPOCA Act.

Also the telecommunication service providers have managed to establish customer care systems for their customers; however these customer care systems are not effective to the customers as they are required to be. Some mobile phone service consumers have complained for poor service and poor responses they get from the customers care centers especially when it comes to solving problems<sup>89</sup>. This shows that the requirement of establishing the customer care unit as required by the laws and regulations is not enough but rather the laws and regulations should go further and provide for more requirements as far as the customer care units are concerned.

Another regulation is the Tanzania Communications (Interconnection) Regulations, 2005, the regulation aim at interconnections agreement between service providers; however It also provides for consumer protection as provided under Regulation 11(1) and (2) that ‘The network service provider who is involved in an interconnection agreement shall ensure that (a) service that is offered to the public is restored as soon as it is practicable in the event of breakdown of the network; (b) in the event that a service that is offered to the public is not available due to a natural act, endeavors to maintain the highest level of service standard to meet emergency services; (c) the integrity of a public electronic communications network is maintained by remaining physically joined

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<sup>89</sup> Mwenegoha.T, “**Rights of Telecommunication Customers: the case of mobile phone service in Dar es Salaam**”, LL.M Thesis, University of Dar es Salaam, 2005

and operational at all times; (d) inter-operability of services is maintained during the duration of their license; and (e) protection of data stored in a technical system which is deemed confidential by either party. The need to meet any of the requirements set out in sub regulation (1) of this regulation shall not constitute a waiver by either party to interconnection agreement’.

The above requirements bind the telecommunication operators who enter into an interconnection agreement to adhere to the requirements stated and the requirements do not waive any party to the interconnection agreement as all parties are bound. This provision protect the telecommunication consumers against the operators/service providers however there is no where in the regulation where the telecommunication operator is required to give notice of breakdown of network to the consumer hence leaving the consumers hanging with no information as to why there is no availability of network.

The regulation also provides that ‘The network service provider shall ensure that a service passing through its network is delivered at the level of quality prescribed by the Authority. The network service provider shall ensure that the prescribed quality of service is not impaired on interconnection’<sup>90</sup>. This put a requirement on the service provider to make sure that its network is delivered at a good quality and not impaired on interconnection so as to make sure that the consumers get network access.

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<sup>90</sup> Regulation 14(1) and (2), the Tanzania Communications (Interconnection) Regulations, 2005

Another regulation is the Tanzania Communications (Type Approval of Electronic Communications Equipment) Regulations, 2005; the regulations put the requirement of approval of electronic communication equipment and wireless communication equipment before such equipments are sold, distributed or installed<sup>91</sup>. This is one way of protecting telecommunication consumers against insufficient equipment which might be harmful to the consumer's well being. However regulation 7(5) of the same regulation provides that 'The Authority shall not be liable for any interference caused to any other equipment, injury, or loss of life, or damage to property, arising as a direct or indirect result of the use of any approved equipment'. This exempts the Authority (TCRA) from any liability for interference caused by any equipment approved by the Authority and yet the regulation does not impose the liability to any one hence leaving the consumers with no choice incase of any interference which might occur to them as a result of use of approved equipment.

Another regulation is the Tanzania Communications (Tariffs) Regulation, 2005; this is the regulation which controls the telecommunication tariffs. It impose obligation to the service providers as far as tariffs are concerned. This is provided under Regulation 4(1) to (6) which states that 'Tariff shall be sufficiently clear as to allow the end-user to determine the description of the service and the details of the nature of the service as well as the amounts and charges payable for such service. Tariffs shall be non-discriminatory and shall guarantee equality of treatment. The communications service

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<sup>91</sup> Regulation 3(1) (a) and (b) of the Tanzania Communications (Type Approval of Electronic Communications Equipment) Regulations, 2005

provider may offer discounts schemes on tariffs and shall inform the Authority of any such scheme available to customers. The communications service provider shall provide accurate billing information on tariffs and usage in order for customers to verify whether or not they are billed correctly. A dominant communications service provider shall not apply tariffs that prevent market entry or distant competition by applying tariffs below the underlying cost of providing the service’.

Another regulation is the Tanzania Communications (Quality of Service) Regulations, 2005 which apply in relation to Network Facility Services, Network Services, Application Services and Content Services. The regulation protects consumers in many different levels. For example among its objectives are ‘to create conditions for customer satisfaction by making known the quality of service which the service provider is required to provide and the user has a right to expect, to measure the quality of service provided by the service providers from time to time and to compare them with the norms so as to assess the level of performance; and to protect the interests of consumers of electronic communications services’<sup>92</sup>.

Also regulation 9 (1) of the Tanzania Communications (Quality of Service) Regulations, 2005 impose duties upon service provider to the consumer. These duties include establishing and maintain efficient information services to assist a customer with queries relating to the services, including installation, customer assistance and directory

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<sup>92</sup> Regulation 4(1), (2) and (3) of the Tanzania Communications (Quality of Service) Regulations, 2005

assistance; provide to customers in respect of each category of the licensed service, equal access to service in the licensed area at the same quality of service and at the same tariff; within three months following the issuance of the license, the licensee shall submit to the Authority for approval a form of standard customer agreement containing the terms and conditions for the provision of licensed services to customers to be known the “standard customer agreement”; and notify all Customers of the terms and conditions of the standard customer agreement and shall thereafter provide licensed services based upon the standard customer agreement. The electronic communication services provider has been allowed to modify the Standard Customer Agreement and will notify the customer accordingly.

The under the regulation 9(1) above the service provider has been kept under obligation to establish and maintain efficient information services to assist a customer with queries relating to the services, however this has not been done effectively as the telecommunication service providers/operators have been charging the customers when the customer make their query to their service providers through the telephone hence making the customers not been able to make their queries for the fear of being charged.

From the above it is obvious that even though there are several legislations, policies and regulations aiming at protecting telecommunication consumers, still the telecommunication consumers are left with little protection as the laws, regulations and policy are unsatisfactory to protect telecommunication consumers in Tanzania.

## 2.6 Comparative Perspective

It is important to compare experience on consumer affairs in different jurisdiction in order to improve individual performance in this area by learning from strategies that have been taken by other countries. In this part a comparison of consumer protection in United Kingdom is discussed. The reason for choosing United Kingdom is because UK and Tanzania use the common law legal system.

Consumer's rights protection in the United Kingdom existed since the middle ages and medieval era. There are various institutions and policies protecting consumers in the United Kingdom, these include the central government, local government, government agencies, government sponsored bodies, trade associations, ombudsmen and even some European institutions and policies.

Under the central government there are various department dealing with consumer protection. For example Department of Trade and Industry (DTI) which is Company Law, Trade, Business Growth, Innovation, Employment Law, Regional Economic Development, Energy, Science, Consumer Law<sup>93</sup>.

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<sup>93</sup>[http://en.wikipedia.org/wiki/Department\\_of\\_Trade\\_and\\_Industry\\_\(United\\_Kingdom\)](http://en.wikipedia.org/wiki/Department_of_Trade_and_Industry_(United_Kingdom)) site visited on 03/08/11

Also there are some government sponsored bodies which deal with issues of consumer protection, for example there is the National Consumer Council<sup>94</sup>. The NCC has the role of representing consumer interest in dealing with the government, local authorities, the office of fair trade and trade bodies. It also advises on consumer protection policy through the publication of reports on matters concerning consumers and through making representations to relevant bodies<sup>95</sup>.

There are also a number of voluntary organizations offering advice and providing information and even services and assistance to consumers. These include the Citizens Advice Bureaux (CABx) which is found all over the country and deals with wide range of consumers' problems. Also there is Consumers Associations which provide consumer information on competing products and services<sup>96</sup>

Moreover there are several legislations in United Kingdom which protect consumers generally. These include the Enterprises Act<sup>97</sup> which makes a number of significant reforms to competition law and consumer law enforcement in United Kingdom. There is also the Consumer Protection Act<sup>98</sup> which aims at safeguarding the consumer from products that do not reach reasonable level of safety. Also there is the Electronic

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<sup>94</sup> [http://www.keymedia.co.uk/resources/downloads/national\\_consumer\\_council.pdf](http://www.keymedia.co.uk/resources/downloads/national_consumer_council.pdf)

<sup>95</sup> Oughton. D. and Lowry.J, **Textbook on Consumer Law**, Blackstone (2000), p.45

<sup>96</sup> Ibid, p.46

<sup>97</sup> Enterprise Act,2002, c.40

<sup>98</sup> Consumer Protection Act, 1987, c.43

Communications Act<sup>99</sup> which provides for the protected use of electronic communications and electronic data storage.

Turning to the telecommunication consumer protection, United Kingdom has an independent regulator known as Office of Communications<sup>100</sup> (OFCOM) which deals UK Communication industries which include television, radio, telecommunications and wireless communications services.

OFCOM has the duty to establish and maintain effective arrangements for consultation on the carrying out of their function with consumers<sup>101</sup>. It protects consumers by ascertaining the state of public opinion from time to time about the manner in which associated facilities are made available. It also ascertains the experiences of such consumer in relation to the resolution of disputes with communications providers or with persons making associated facilities available and the interests and experience of such consumers in relation to other matters that are incidental to, or are otherwise connected with their experiences of the provision of electronic communications networks<sup>102</sup>.

Furthermore the UK Communications Act requires OFCOM to ensure that every communications provider in the United Kingdom provides access to a dispute procedure scheme to their domestic and small business customers. OFCOM must approve these

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<sup>99</sup> Electronic Communication Act, 2000, c.7

<sup>100</sup> <http://www.ofcom.org.uk> site visited on 03/08/11

<sup>101</sup> UK Communications Act, 2003, c.21

<sup>102</sup> UK Communication Act, 2003, c.21



dispute procedure schemes. Two such schemes have been approved<sup>103</sup>; these are Office of the Telecommunications Ombudsman (Otelo)<sup>104</sup> and the Communication and Internet Service Adjudication Scheme (CISAS)<sup>105</sup>.

The Office of the Telecommunication Ombudsman is independent from the service providers and the regulator. Although the company is approved as a dispute resolution service by the regulator (OFCOM), its governance structure has been carefully designated to protect the independence of the Ombudsman.

Otelo has the task of sorting out complaints with public communications provider. They do this by investigating the complaints fairly, by listening to both sides of the story and looking at the facts. The service is free and independent.

Similarly the Communications and Internet Service Adjudication Scheme (CISAS) settles disputes between registered communications companies and their consumer and small business customers. CISAS, which is approved by OFCOM was launched in December, 2003. This service was promoted so as to ensure that consumers have access to a free, independent dispute resolution mechanism.

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<sup>103</sup> <http://stakeholders.ofcom.org.uk/consultations/adr05/statement> site visited on 03/08/2011

<sup>104</sup> <http://www.ombudsman-services.org/communications.html> site visited on 03/08/2011

<sup>105</sup> <http://www.cisas.org.uk>

In their further efforts to protect telecommunication consumers the United Kingdom Government compelled the communications industry to develop effective codes of practices for the benefit of consumers. Additionally the Communications Act<sup>106</sup> requires the regulator (OFCOM) to ensure that every public communications provider in the UK provides its domestic and small business consumers with an approved code of practice.

Compared to Tanzania, although the laws and regulations gives obligations to telecommunication operators in Tanzania to have customer care facilities which among other things solve misunderstanding between the service provider and their consumer, there is no mechanism to ensure that every telecommunication service provider in Tanzania provides access to satisfactory dispute procedure scheme to their domestic and small business customers.

Also the implementation of consumer protection laws and regulations in Tanzania is very low, this is because there are no specific government agencies or bodies to oversee the implementation of the laws and regulations as well as the protection of telecommunication consumers. The TCRA being a communication regulator it regulates many things including the broadcasting, which makes it overloaded.

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<sup>106</sup> Communication Act, 2003, c.21

## 2.7 Empirical Literature Review

Empirical review look on how other researchers have tackled the subject in the current situation and their findings and their suggestion for future research.

**Tenga, R.W.**, in his journal of *Consumer Protection Model and the Tanzania Legal Compliance Framework-with reference to the Communication Sector*<sup>107</sup> in his findings he pointed out that “it is an acknowledged fact that out of all the market players- government, business and consumers – it is the consumer group that is largest but at the same time it is weakest in terms of its actual market power”. He further stated “Consumer power can not be felt in the market without an organized consumer base. This organized base is woefully lacking in Tanzania and reports and market views have constantly noted this weakness. The government on its part to remedy this lacunae has set up a mechanism to provide advisory functions on the basis on which such a consumer base could be cultivated. This is the rationale for the National Consumer Advocacy Council (NCAC) and Consumer Consultative Council of Tanzania Communications Regulatory Authority”<sup>108</sup>.

The Consumer Consultative Council is established under section 37(1) of the Tanzania Communications Regulatory Authority Act No 12 of 2003. However the council has proved not to be effective as it is required to be, this has also been pointed by **Tenga**,

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<sup>107</sup> Tenga, R.W., **Consumer Protection Model and the Tanzania Legal Compliance Framework-with some reference to the Communication Sector**, paper presented at the TCRA Competition Workshop [Movenpick Hotel] 26<sup>th</sup> June, 2009.

<sup>108</sup> Ibid

**R.W** on his journal<sup>109</sup> when he said “the TCRA-CCC must put up its strategic plan and build a National Network whereby it can effectively reach Tanzanians. So far the TCRA-CCC is still a Dar es Salaam and major urban areas phenomenon”.

**Behitsa, M.M and Diyamett, B.D.,**<sup>110</sup> on their paper *Tanzania ICT Sector Performance Review* found that “Respondents of their survey noted a discrepancy between actual performances of service compared to what is promised. For example, while there is a lot of advertisement on new services and how to subscribe, there is little information on how to unsubscribe, causing a lot of frustration to customers”. This shows how much the Tanzania telecommunication operators misinform the telecommunication consumers and leave them with little or no choice at all.

On the issue of awareness **Behitsa, M.M and Diyamett, B.D.,**<sup>111</sup> pointed out that “It appears that the general public lacks awareness on developments in the telecommunication sector and its potential contribution to national development. There is a need to provide education about developments in the telecommunications sector.”

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<sup>109</sup> Tenga, R.W., **Consumer Protection Model and the Tanzania Legal Compliance Framework-with some reference to the Communication Sector**, paper presented at the TCRA Competition Workshop [Movenpick Hotel] 26<sup>th</sup> June, 2009.

<sup>110</sup> Behitsa, M.M. and Diyamett, B.D., **Tanzania ICT, Sector performance Review 2009/2010: Towards Evidence-based ICT Policy and Regulation**, Volume Two, Policy Paper 11, 2010

<sup>111</sup> Ibid

*Mwenegoha, T*<sup>112</sup> in her research noted “the National Telecommunication Policy has addressed several issues such as the development of the telecommunications sector and assurance that telecommunication services are provided in a liberalized and competitive manner are adequate, sustainable and efficient in all sectors of the economy and to put in place a reliable telecommunications infrastructure and ensure service inter-connectivity nationally and internationally. However the policy is unsatisfactory in addressing the issues of telecommunication consumer protection. No clear strategies or objectives are provided under this area”.

*Karua, E*<sup>113</sup> in her research findings found out that Consumers in Tanzania are affected by the caveat emptor principles “buyers beware”. In some cases the terms and conditions are placed beyond consumer’s vision, therefore many firms escape liability. This problem harms consumers’ freedom, and still there is no consumer law that protects consumers from such principles.

Literatures show there is a problem as far as the issue of consumer protection is concerned. This study will specifically examine and assess the consumer protection under the telecommunication laws, policy and regulation and point the lacunas and give recommendations at the end.

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<sup>112</sup> Mwenegoha.T., “Rights of Telecommunication Customers: the case of mobile phone service in Dar es Salaam”, LL.M Thesis, University of Dar es Salaam, 2005

<sup>113</sup> <http://www.scribd.com/doc/50261009/19/Consumer-protection-in-Tanzania> site visited on 28th April, 2011

## **CHAPTER THREE**

### **3.0 RESEARCH DESIGN AND METHODOLOGY**

In this Chapter, the Research Design and Methodology are discussed. Case study design was used during the study. Data from case study enabled the researcher to get information which was purposive and comprehensive.

#### **3.1 Area of Study**

The researcher chose the Tanzania Communication Regulatory Authority (TCRA) as the case study for the research for the following reasons:

- i. It is the regulator of all telecommunication matters in Tanzania thus it has all necessary information as far as the telecommunication laws, policy and regulations are concerned.
- ii. It is the authority which deals with the enactment and amendment of policy and regulations.
- iii. It gives advice and recommendations in enactment and amendment of laws
- iv. Geographically it is convenient for the researcher to collect data since the researcher resides in Dar es Salaam.

### **3.2 Research Data**

All kind of data primary, secondary and tertiary data were collected in order to get good composition for the research.

#### **3.2.1 Primary Data**

Primary data were collected through observation and questionnaires which were given to respondents who are the management and employees in the Tanzania Communications Regulatory Authority.

#### **3.2.2 Secondary Data**

These data were collected from the legal department, the consumer consultative council and other departments dealing with telecommunication matters. The researcher received data through available documentation.

#### **3.2.3 Tertiary Data**

These data were collected from Tanzania Communication Regulatory Authority publicized articles such as company profile and through their website ([www.tcra.go.tz](http://www.tcra.go.tz)) the available data helped the researcher to write the research paper with quality data and also minimize the time consumption during data collection.

### **3.3 Data Gathering Method and Techniques**

Various methods of data collection were deployed so as to get the best information which enabled the researcher to analyze the data. Those methods included; structured questionnaires, formal interview and documentary review. Also through observation and informal discussion which had impact on the reliability of the data fed on the questionnaires.

### **3.3.1 Questionnaire Administration**

This technique was used based on the nature of respondent and considering the time factor at work place. Structured questionnaire guided the respondents on the necessary information required in the preparation of the research paper. The questionnaire had closed ended questions and they were divided into three parts, part one the researcher introduced herself, part two the general information part which dealt with the respondents information and third part were questions relating to the subject in hand which is consumer protection, laws, policy and regulations and Tanzania Communications Regulatory Authority as an independent body dealing Telecommunication matters in Tanzania.

### **3.3.2 Interview**

The interview schedule was used by the researcher in some specific situations. The researcher used the guide on interviewing various respondents from the TCRA. Interview was conducted with some heads of departments and Units of TCRA.



### **3.3.3 Documentary Review**

Company documents were reviewed, these assisted in clarification of some data. Documents relating to protection of consumers in telecommunication sector and disputes/complaints brought by aggrieved consumers handled by the organization were reviewed.

### **3.3.4 Observation and Informal Discussion**

The researcher also used the observation technique in the case study in order to get data. This helped in situation clarification as it helped the researcher to compare data collected through observation with that obtained from the respondents through the use of questionnaires, interview and documentary review.

### **3.3.5 Literature review**

Literature related with consumer protection in the telecommunication sector was reviewed and important information retrieved assisted in explanation of finding.

## **3.4 Sampling**

Sampling is selection of a number of study units from a defined population to be studied. Due to time and financial constraints, the study took a sample of the population under study.

### 3.4.1 Sample

Sample is a definite plan for obtaining sample from a given population<sup>114</sup>. It is a segment of population in which researcher is interested in gaining information and drawing conclusion<sup>115</sup>. Total of 40 employees for the TCRA including the consumer consultative council of TCRA were used as sample. These included normal employees and the management.

**Table 1: Expected number of respondents against actual respondents.**

<b>Respondents</b>	<b>Expected respondents</b>	<b>Actual respondents</b>	<b>% Actual respondents</b>
Respondents provided with questionnaire	40	37	92.5
Respondents interviewed	5	3	60
Total	45	40	88.8

Source: research findings, 2011

### 3.5 Validity and Reliability

<sup>114</sup> Kothari C.R; (2004) **Research Methodology: Methods and Technique**, 2<sup>nd</sup> Revised Edition, New Age International (P) Ltd, Publishers ,New Delhi.

<sup>115</sup> Barbie. E, (1992) **The Practice of Social Research**, (6<sup>th</sup> Edn) Belmont, California: Wadsworth

A combination of different methods such as interview, questionnaires, documentary review and observation in collecting information were employed to back up and complement on each other to bridge the weakness of each method.

### **3.6 Data Analysis Procedure**

Data analysis is systematic process involving working with data; organizing them and dividing them into small manageable parts<sup>116</sup>. Both qualitative and quantitative data analysis technique were used to analyze data collected.

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<sup>116</sup> Guba, E.G & Lincoln, Y.S (1994) **Competing Paradigms in qualitative research** as cited in Shah, S.K & Corley, K.G (2006), **Building better Theory by bridging the quantitative-qualitative divide**, journal of management studies, p. 1823

## CHAPTER FOUR

### 4.0 PRESENTATION, ANALYSIS AND DISCUSSION OF FINDINGS

Presentation, analysis and discussion of research findings are discussed in this chapter.

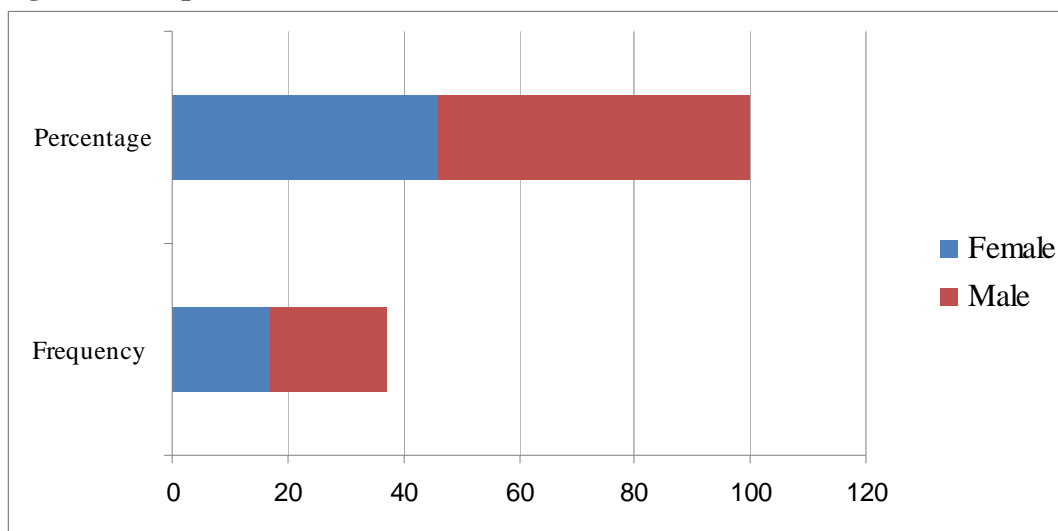
The focus is on providing answers to research questions raised in chapter one.

#### 4.1 Profile of Respondents

##### 4.1.1 Gender Composition

Out of 40 respondents whom were provided with questionnaire, 37 of questionnaires were returned. This represents 92.5 percent of the targeted respondents. The respondents were required to state their gender. Figure 1 below indicates the respondents' gender provided with the questionnaires. This shows that majority of the staff and managerial positions in telecom industry are male dominated.

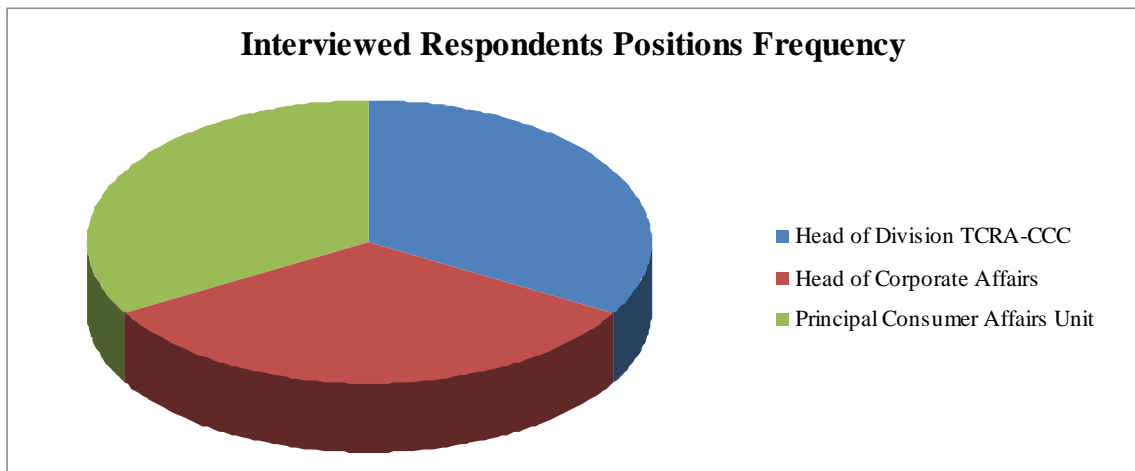
**Figure 1: Respondents' Gender**



Source: Research Findings, 2011

The study also involved interviewed respondents. The interviewed respondents were Head of Division, Head of Departments and Principal of units. Figure 2 below shows their interviewed respondents' positions.

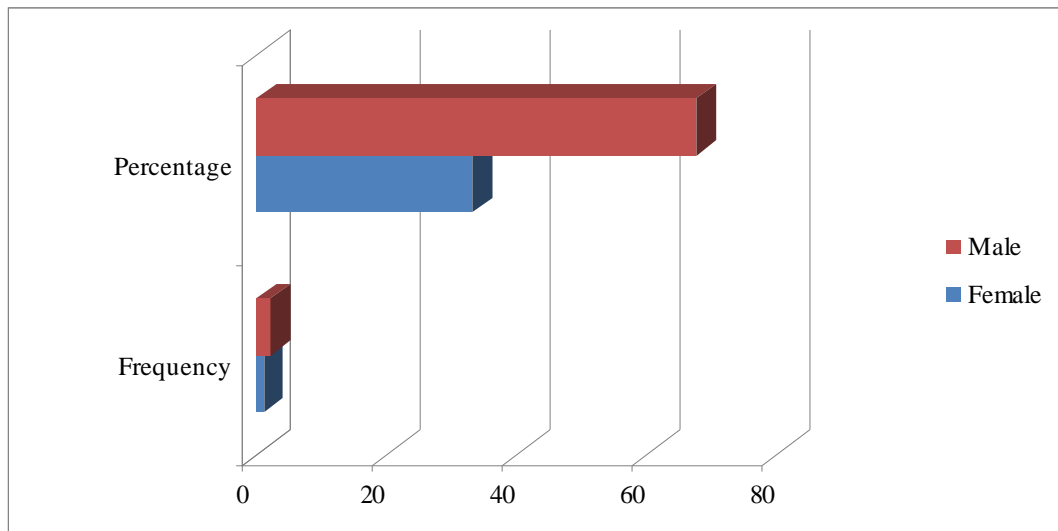
**Figure 2: Interviewed Respondents' Positions**



Source: Research findings, 2011

On part of their gender Figure 3 below indicates the gender of interviewed respondents.

**Figure 3: Interviewed Respondents' Gender**

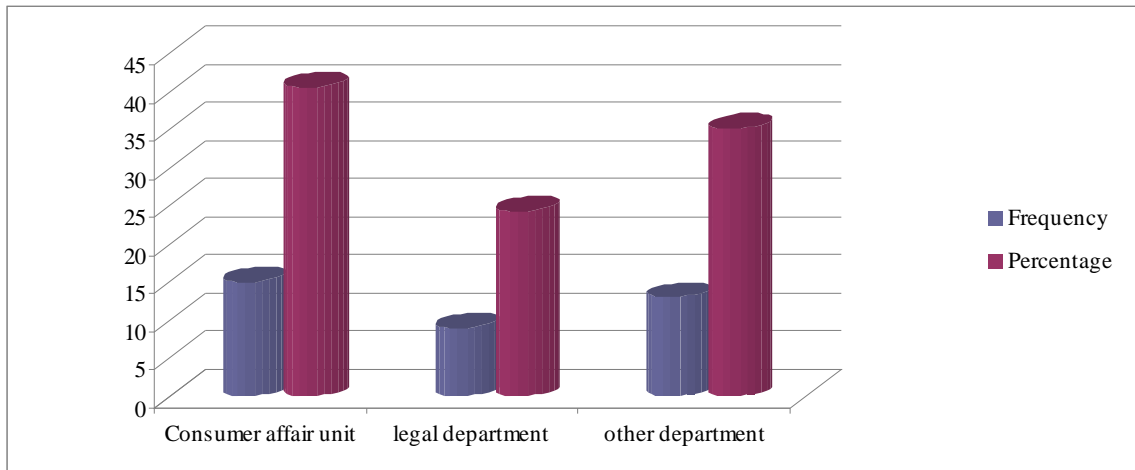


Source: Research Findings, 2011

#### 4.1.2 Respondents Work Department

The respondents were required to state the department which they are working for. This facilitated the understanding on department in which the respondents are responsible for as well as the number of the respondents in the chosen sample who are responsible for consumer issues and legal issues. Figure 4 below shows various departments where the respondents work.

**Figure 4: Respondents Work Department**



Source: Research Findings, 2011

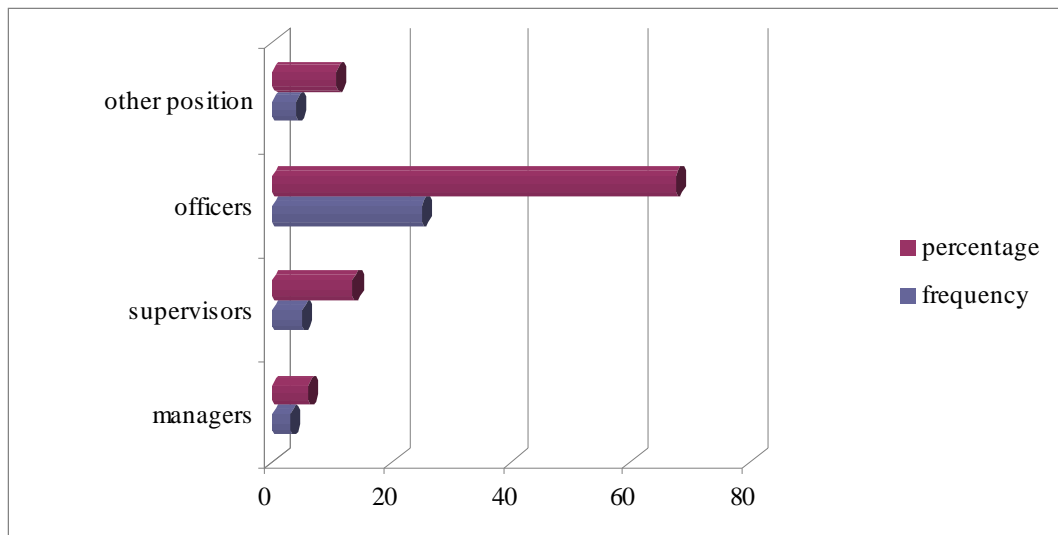
From the figure above, majority of respondents about 40 percent work within the Consumer Affairs Unit. This means the researcher targets has been met as the researcher intention was to get information from this department as it is the department which deals direct with the consumers. Nevertheless, this does not mean that data collected from the respondents of other department is irrelevant. It should be noted that, the duty of TCRA

is to protect the interests are protected of consumer among other duties<sup>117</sup>; therefore, by virtue of being a TCRA employee, one has to make sure consumers' interests are protected including Telecommunication consumers irrespective of the department you are assigned to.

#### 4.1.3 Respondents Work Position

The respondents were also asked to state their work position. This helped the researcher to know the work position/title of respondents in the chosen sample. Figure 5 below indicates the respondents work position.

**Figure 5: Respondents work position**



Source: Research Findings, 2011

The purpose of this information was to know the level of understanding of consumer protection among TCRA staff regardless of their position.

<sup>117</sup> Section 5(b) of Act No.12 of 2003

## 4.2 Consumer Protection under Telecommunication Law, Policy and Regulation

Based on the stated research objectives, the researcher examined the existing Tanzania Telecommunications Laws, policy and regulations, as a way of identifying lacunas and implications of lacunas. This facilitated devising of recommendations of ways to improve the telecommunication laws, policy and regulations to protect telecommunication consumers. Questionnaires and interview guide were designed to contain questions on consumer protection in relation to the telecommunication laws, policy and regulations.

### 4.2.1 Respondents Awareness on Consumer Protection in Telecommunication matters

The respondents were asked to state if they know of anything about consumer protection in telecommunication sector for instance the free of charge calls to customer care units of telecommunication operators. This helped the researcher to know whether any awareness existed about consumer protection in the telecommunication sector. Table 2 below indicates the number of respondents who know about consumer protection in the telecommunication sector.

**Table 2: Respondents' Knowledge of Consumer Protection in Telecommunication Sector.**

Question	Responses			
	Yes	%	No	%
Do you know anything about consumer protection in Telecommunication Sector?	37	100	0	0
<b>Total</b>	37	100	0	0

Source: Research Findings, 2011

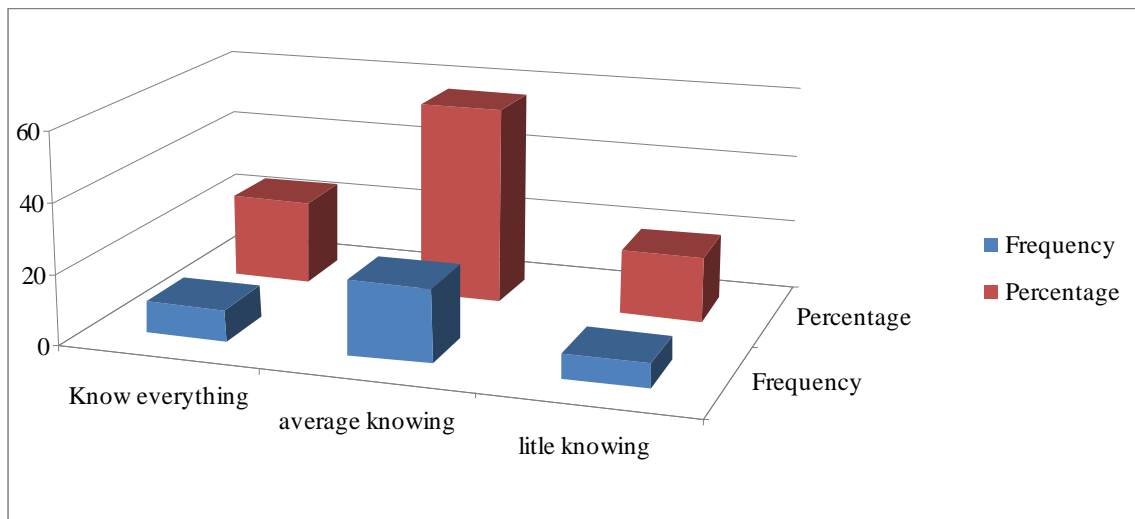


In the sample of 3 interviewed respondents all respondents (100%) said they know about consumer protection.

#### 4.2.2 Level of Knowledge on Consumer Protection in the Telecommunication Sector

Respondents were asked to state their level of understanding on consumer protection in the telecommunication sector. The researcher's purpose for this question was to find out how much the respondents knew about consumer protection in the telecommunication sector based on three criteria i.e. know everything, average knowing and little knowing. Figure 6 below indicates the level of knowledge of respondents on consumer protection in the telecommunication sector.

**Figure 6: Level of respondents' knowledge on consumer protection in telecommunication sector**



Source: Research findings, 2011

From the findings it shows very few respondents i.e. about 24% knew everything about consumer protection while majority of the respondents had average knowledge of consumer protection in the Telecommunication sector. On part of the interviewed respondents all 3 respondents stated they know everything about consumer protection in the telecommunication sector.

#### **4.2.3 Respondents Knowledge of Tanzania Telecommunication Laws and Regulations on Consumer Protection.**

Respondents were asked to state if they had heard about Tanzania Telecommunication Laws and Regulations on consumer protection. Table 3 below shows the respondents response to this question.

**Table 3: Respondents' knowledge of Consumer Protection in Tanzania Telecommunication Laws and Regulations**

Question	Responses			
	Yes	%	No	%
Have you heard of Tanzania Telecommunication Laws and Regulations on consumer protection?	37	100	0	0
<b>Total</b>	37	100	0	0

Source: Research Findings, 2011

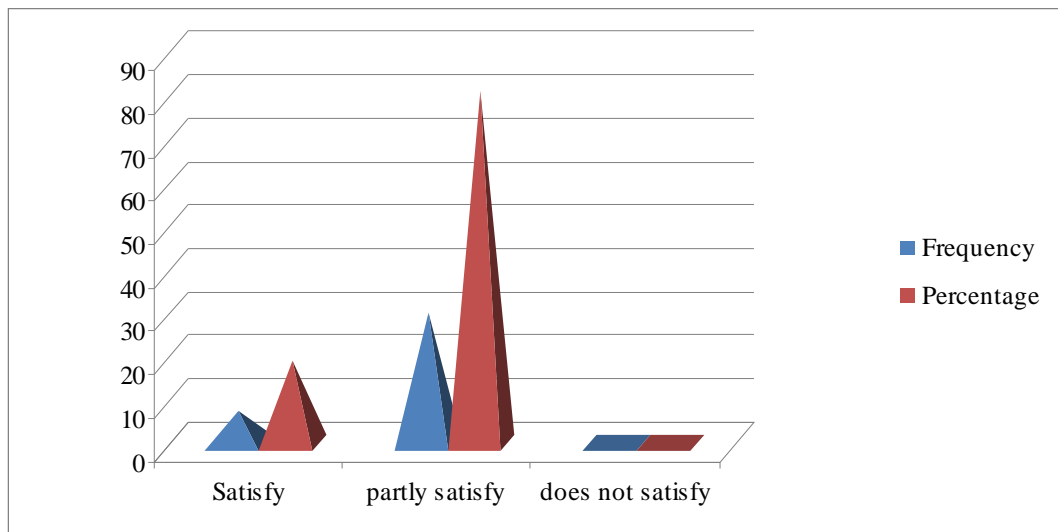
All the respondents in the chosen sample responded positively to this question as all of them have heard about Tanzania Telecommunication Laws and Regulations on consumer protection. The same applied to interviewed respondents who all agree to have

heard about of Tanzania Telecommunication Laws and Regulations on consumer protection.

#### 4.2.4 Satisfaction of Existing Telecommunication Laws and Regulations in protecting Telecommunication Consumers

The respondents were asked questions to see if the existing Tanzania Telecommunication Laws and Regulations satisfy the requirements of consumer protection in the telecommunication sector. Below is Figure 7 which shows the respondents response to this question

**Figure 7: Satisfaction of existing Telecommunications Laws and Regulation in protecting Telecommunications Consumers**



Source: Research findings, 2011

Majority of the respondents about 81 percent responded that the existing Telecommunication laws and regulations partly satisfy the requirements of consumer protection in the Telecommunication sector in Tanzania while about 19 percent said the

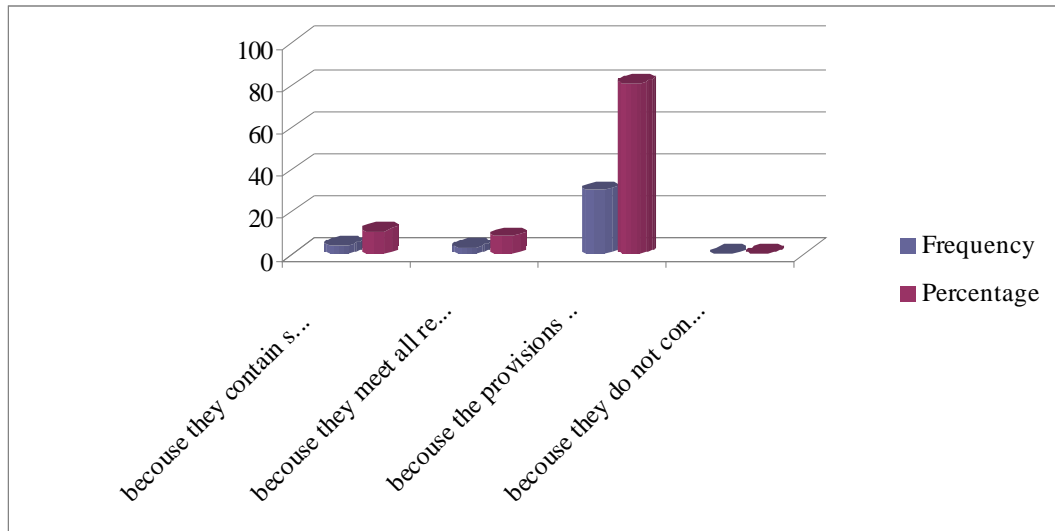
existing laws and regulations satisfy the requirements of consumer protection. On part of interviewed respondents 2 (66.7%) respondents said the laws, policy and regulation partly satisfy the requirements of consumer protection in the telecommunication sector while 1 (33.3%) respondent said the existing laws, policy and regulations satisfy the requirements of consumer protection in telecommunication sector because the provisions in it are sufficient for protection of consumers in Telecommunication sector. The said respondent further insisted that the EPOCA, of 2010 and Telecommunication regulations have a lot of provisions which protect the telecommunication consumers in Tanzania.

#### **4.2.5 Reasons for the existing Telecommunication Laws and Regulations to satisfy or partly satisfy the requirement of Consumer Protection.**

The researcher further asked the respondents who were provided with questionnaires for the reasons in support of their answers as to why they think the existing telecommunications laws and regulations satisfy or partly satisfy the requirements of consumer protection in the telecommunication sector in Tanzania. The respondents were given reasons to choose from the questionnaire. Below are the reasons as illustrated under Figure 8.

- i) Because they contain some provisions of law which are sufficient to protect telecommunication consumer.
- ii) Because they meet all requirements of consumer protection
- iii) Because the provisions of law which protect consumer are very few and have shortcomings
- iv) Because they do not contain provisions of law which protect consumers.

**Figure 8: Reasons for Telecommunication Laws and Regulations to satisfy or partly satisfy the requirements of Consumer Protection**



Source: Research findings, 2011

From the findings it shows that majority of respondents i.e. about 81 percent out of the chosen sample who answered the existing telecommunication laws and regulations partly satisfies the requirements of consumer protection sector said it is because the provision of law which protect the consumer are very few and have shortcomings while about 10 percent of respondents support that the laws and regulations satisfy the requirement of consumer protection said it is because they contain some provisions of law which are sufficient to protect telecommunication consumer and about 8 percent said it is because the existing telecommunications laws and regulations meet all requirements of consumer protection

#### **4.2.6 Satisfaction of existing National Telecommunication Policy of 1997 in Protecting Telecommunication Consumers**

Furthermore the researcher requested the respondents to indicate whether the existing National Telecommunication Policy of 1997 satisfies the requirements of consumer protection in the telecommunication sector. Table 4 shows the response of the respondents to this question.

**Table 4: Satisfaction of existing National Telecommunication Policy, 1997 in Protecting Telecommunications Consumers**

<b>Responses</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Satisfies	0	0
Partly satisfy	11	29.7
Do not satisfy	26	70.3
<b>Total</b>	<b>37</b>	<b>100</b>

Source: Research findings, 2011

Majority of respondents (70.3%) who were provided with questionnaires said the NTP, 1997 does not satisfy the requirements of telecommunication consumer protection while 29.7% said the NTP, 1997 partly satisfies the requirements of consumer protection. On the part of the interviewed respondents, all 3 (100%) respondents said that the NTP, 1997 partly satisfies the requirements of consumer protection.

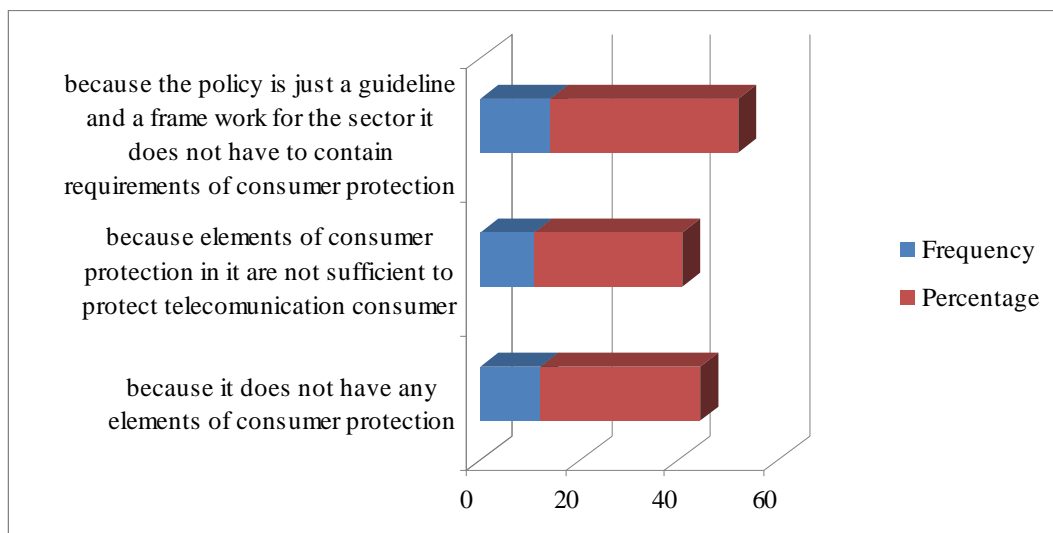
#### **4.2.7 Reasons for the existing NTP, 1997 to Partly Satisfy or not to Satisfy the requirement of Consumer Protection**

The respondents were asked to give reasons in support of their answers as to why they think the existing NTP, 1997 partly satisfies or does not satisfy the requirements of

consumer protection in the telecommunication sector in Tanzania. The respondents were given reasons to choose in support of their answer. Below are reasons as illustrated under Figure 9.

- i) Because it does not have any elements of consumer protection
- ii) Because elements of consumer protection in it are not sufficient to protect Telecommunication consumers
- iii) Because the policy is just a guideline and a framework for the sector; it does not have to contain requirements of consumer protection.

**Figure 9: Reasons for NTP, 1997 to partly satisfy or not to satisfy the requirements of consumer protection**



Source: Research Findings, 2011

Majority of respondents responded the reason is that the National Telecommunication Policy of 1997 is just guideline and a framework for the sector; it does not have to contain requirements of consumer protection. On the other hand other respondents said it

is because it does not have any element of consumer protection while few others said the elements for consumer protection in it are not sufficient. On the part of interviewed respondents about 67 percent of them interviewed said it is because the policy is just a guideline and a framework for the sector it does not have to contain requirements of consumer protection while 33 percent of the respondent said it is because the elements of consumer protection are not sufficient to protect telecommunications consumers.

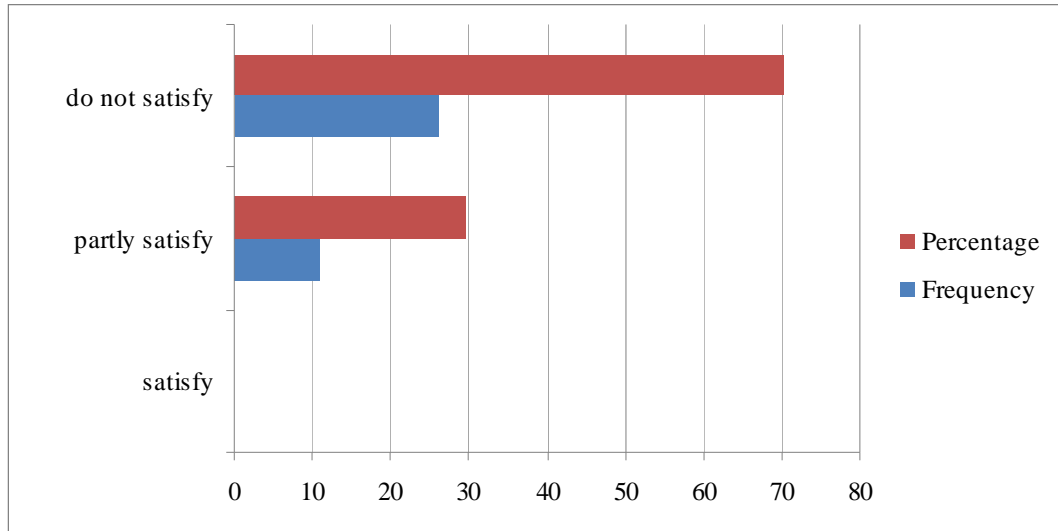
The National Telecommunication Policy, 1997 is the policy which provides for the vision and missions of the telecommunication industry in Tanzania. The policy hardly provides on consumer protection that is why the researcher wanted to know the respondents opinion on this.

#### **4.2.8 Satisfaction of existing National Information and Communication Technology Policy of 2003 in protecting Telecommunication consumers**

The researcher wanted to find out the respondents opinion on the National Information and Communication Technology Policy of 2003, if it satisfies the requirements of consumer protection in the telecommunication sector. Figure 10 shows the response of the respondents to this question.



**Figure 10: Satisfaction of existing ICT Policy, 2003 in protecting Telecommunications consumers**



Source: Research findings, 2011

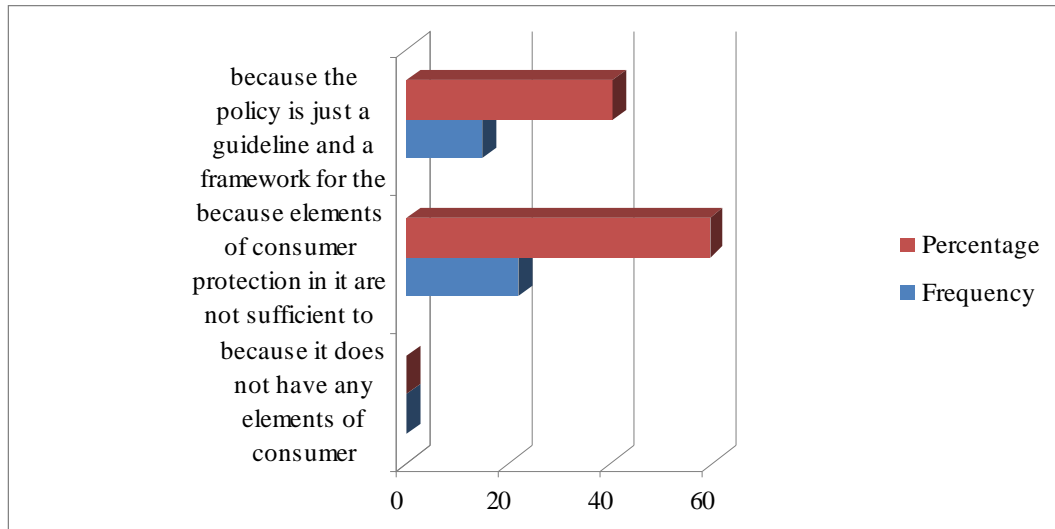
#### **4.2.9 Reasons for the existing ICT Policy, 2003 to partly satisfy or not to satisfy the requirement of consumer protection.**

The respondents were asked to give reasons in support of their answers as to why they think the existing ICT partly satisfies or does not satisfy the requirements of consumer protection in the telecommunication sector in Tanzania. The respondents were given the reasons to choose from and below are the reasons and the respondents' response as illustrated under Figure 11.

- i) Because it does not have any elements of consumer protection
- ii) Because elements of consumer protection in it are not sufficient to protect Telecommunication consumers

- iii) Because the policy is just a guideline and a framework for the sector it does not have to contain requirements of consumer protection.

**Figure 11: Reasons for ICT Policy, 2003 to partly satisfy or not to satisfy the requirements of consumer protection**



Source: Research Findings, 2011

Unlike the National Telecommunication Policy, 1997 majority of respondents said the reason is that elements of consumer protection in the National ICT Policy, 2003 are not sufficient to protect Telecommunication consumers while the rest of the respondents said the reason is that the policy is just a guideline and a framework for the sector it does not have to contain requirements of consumer protection in it. On part of interview respondents 66.7% still said the policy is just a guideline and a framework for the sector and it does not have to contain requirements for consumer protection while 33.3% of the respondent said the elements for consumer protection are not sufficient to protect telecommunication consumers.

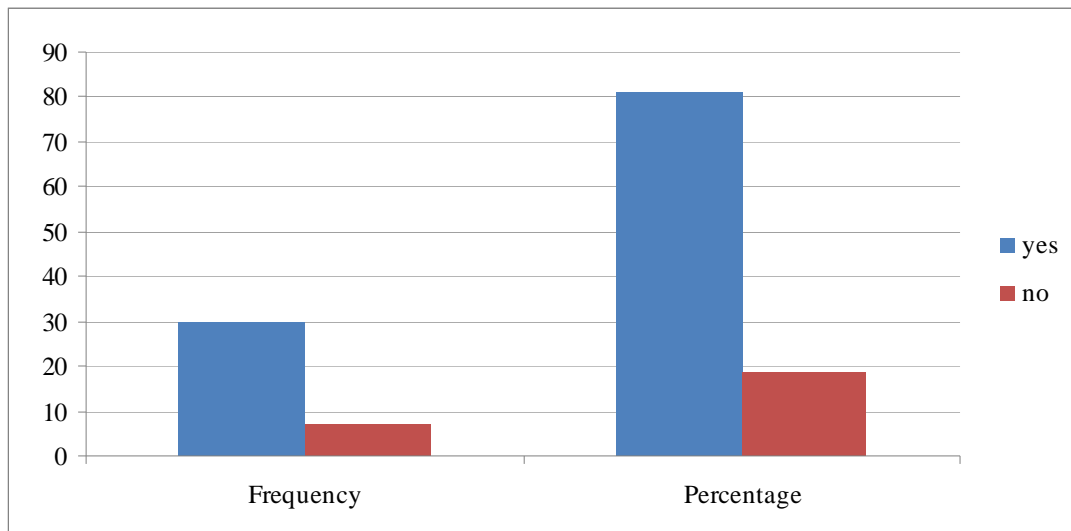
The ICT policy, 2003 is the policy which was enacted with the vision of making Tanzania to become a hub of ICT Infrastructure and ICT solutions that enhance sustainable socio-economic development and accelerated poverty reduction both nationally and globally. Like the NTP, 1997 the policy hardly provides on consumer protection that is why the researcher wanted to know the respondents opinion on this.

### 4.3 Effects of Gaps in the Existing Law, policy and Regulations

#### 4.3.1 Frequently Advertising System through Short Messages

The respondents were asked if the frequently advertising system through short messages sent to the consumers' cell phones which leads to nuisance as used by the telecommunication operators is the result of the shortcomings in the existing telecommunication laws, policy and regulation. Figure 12 indicates the respondents' answers.

**Figure 12: Respondents' answer to frequently advertising system**



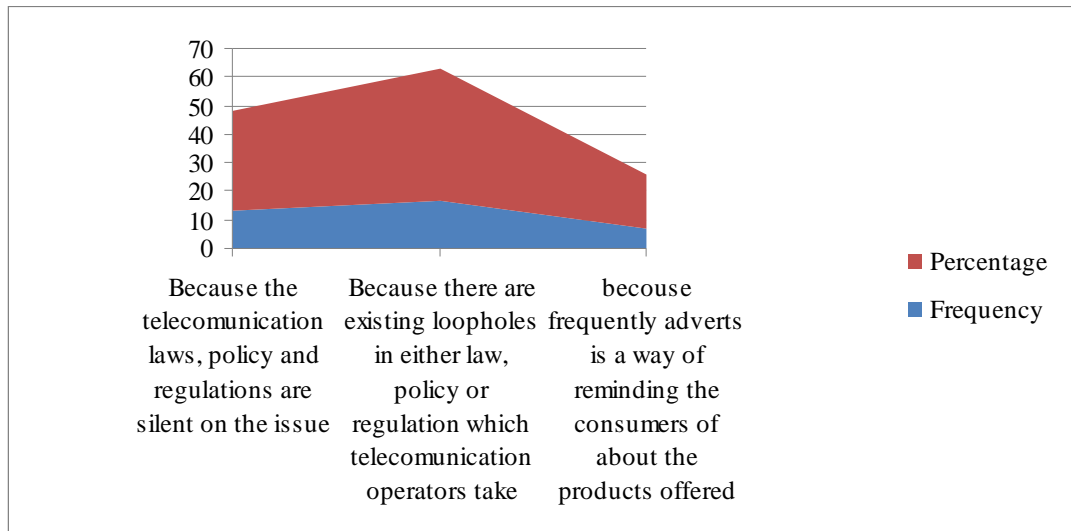
Source: Research Findings, 2011

The findings show that majority agreed that frequently advertising system through short messages sent to the consumers cell phones which leads to nuisance as used by the telecommunication operators is a result of the shortcomings in the existing telecommunication laws, policy and regulation. On the part of interviewed respondents, 2 respondents (66.7%) agreed that frequently advertising system through short messages sent to the consumers cell phones which leads to nuisance as used by the telecommunication operators is a result of the shortcomings in the existing telecommunication laws, policy and regulation while 1 respondent (33.3%) disagreed.

#### 4.3.2 Respondents reasons in support of their answer

The researcher also asked the respondents for the reasons for their answers and Figure 13 below indicates the respondents' reasons.

**Figure 13: Respondents reasons on the frequently advertising system**



Source: Research Findings, 2011

The findings show that the majority said the reason for the frequent adverts is that there are loopholes in either law, policy or regulation which telecommunication operators take advantage of. On the part of interviewed respondents the 66.7% said it is because there are existing loopholes which telecommunications operators take advantage of while 1 respondent (33.3%) disagreed because the law can not contain everything, some of the things are guided by rules and the rules are still in the drafting process.

#### **4.3.3 Billing the Telecommunication Consumer when making inquiry**

The respondents were asked if they think the system of billing the telecommunication consumers when the consumer wants to make inquiry or report their problem to their telecommunication operators/service providers is a result of the shortcomings in the existing telecommunication laws, policy and regulations. Table 5 indicates the respondents' answers.

**Table 5: Respondents opinion on the billing system**

<b>Response</b>	<b>Frequency</b>	<b>Percentage (%)</b>
Yes	30	81.1
No	7	18.9
<b>Total</b>	<b>37</b>	<b>100</b>

Source: Research Findings, 2011

#### **4.3.4 Reasons in support of their Answers**

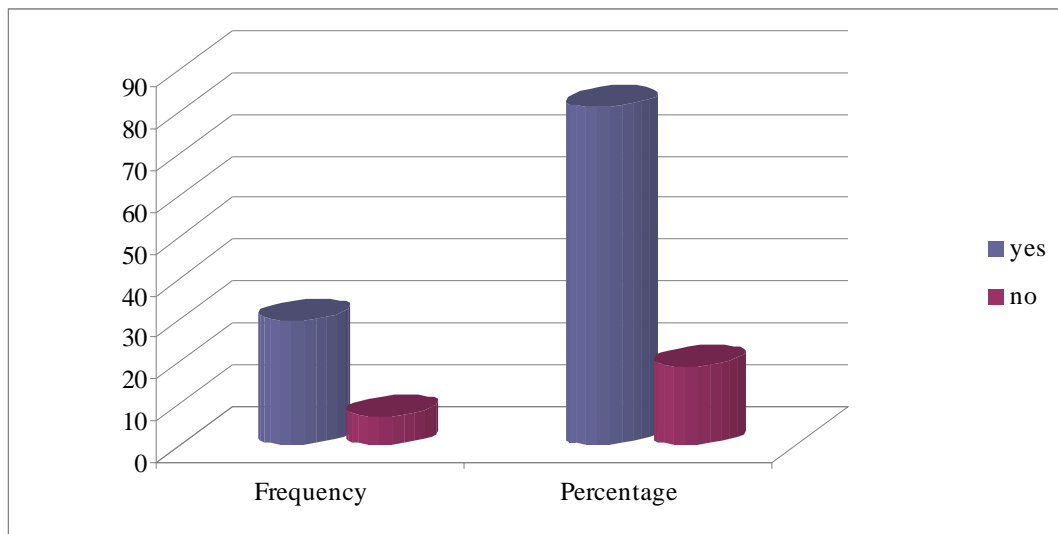
The researcher also asked the respondents for the reasons for their answers. Here 81.1% said it is because there are existing loopholes in either law, policy or regulation which telecommunication operators take advantage of while the 18.9% percent did not give out their reasons in support of their answer to question 4.2.2.3 above. On part of the interviewed respondents 2 respondents (66.7%) said it is because there are existing loopholes which some of telecommunication operators take advantage of while 1 respondents (33.3%) said the billing system is not result of shortcomings in the existing laws, policy and regulation because the law prohibit billing /charging of consumers when the consumers want to make their inquiry or report a problem it is just that the operators find the way of charging the consumers after the free 100 dial which only gives consumers instruction on how to get help form the customer care centre which is charged. The said respondent further said the TCRA has noted the problem and are currently working on it as they plan to make rules to prohibit such conducts.

To remedy the above shortcomings the TCRA being the regulatory authority of Communications matters in Tanzania admitted to have seen the problem/shortcomings and at the time the researcher was conducting her research, there were rules which were still drafted by the TCRA to cover the shortcomings. Until the research was completed the rules were not in force yet. On the other hand the researcher wished to congratulate the TCRA for the initiatives they took considering that the process of amending the laws involves a long process which takes time as it involves the parliament

#### 4.4 Burden of the Shortcomings on Consumers

The researcher went further to ask the respondents if they agree that due to lack of enough provisions and elements of consumer protection on the telecommunication laws, policy and regulations, the consumer end up carrying the burden of the shortcomings in the said laws, policy and regulations. Figure 14 below indicates the respondents' response to the question.

**Figure 14: Respondents' Opinion on Consumer carrying burden of the Shortcomings**



Source: Research Findings, 2011

From the findings majority of respondents agree that the shortcoming in the existing laws lead to the consumers to carry the burden like the nuisance burden caused by overpromotions through consumers cell phones. On the part of respondents who were interviewed all respondents agreed that the consumers are the once carrying the burden

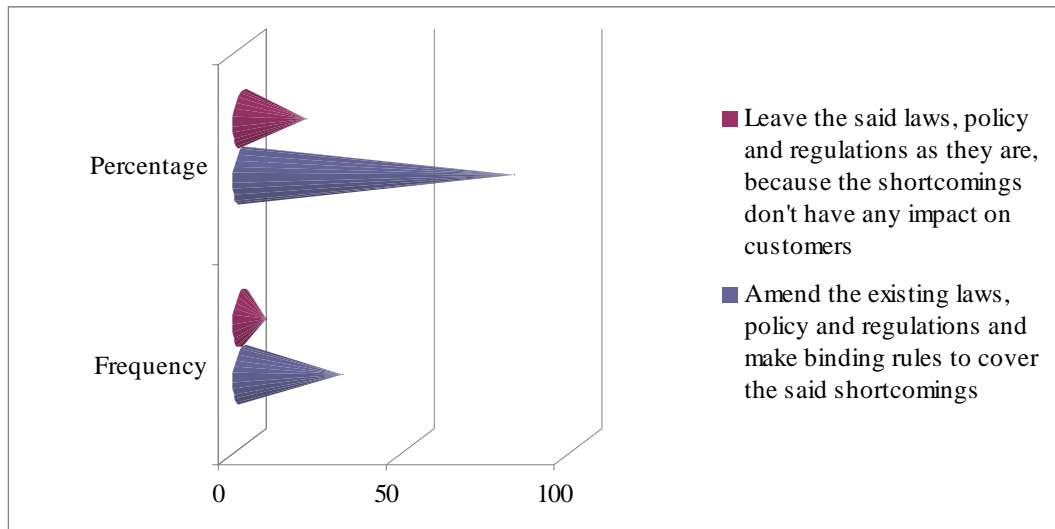
but 1 respondent was of different opinion on the cause of the burden as according to the respondent the regulations and the laws are good but what is needed are the rules which will be binding. The rules are still in the drafting process and will be released once they are completed.

TCRA being the regulatory authority the researcher wanted to know the number of complaints arising out of shortcomings it has received so far and the respondents (81.08%) said over 100 complaints have been received so far. On the part of interviewed respondents all respondents said they have received more than 100 complaints of such a nature and TCRA is working on them.

#### **4.5 Respondents' Opinion**

The researcher wanted to get the respondents' recommendations on what should be done to overcome the shortcomings. Figure 15 below indicates respondents' opinion.



**Figure 15: Respondents Recommendations**

Source: Research Findings, 2011

The majority of the respondents (81.08%) agreed that the existing laws, policy and regulations need to be amended and also there should be made binding rules to cover those shortcomings.

#### 4.6 Implications of the Shortcomings

The shortcomings in the said laws have had implications on telecommunication consumers in Tanzania. The implications include unfair charging/billing and nuisance.

The consumers have been charged unfairly when they want to report their problem or inquiry to their telecommunication operators. This is unfair charging/billing because the law prohibits charging for this service and also charging unsatisfied consumers for

reporting a problem or making inquiry amount to unfair conduct on part of the Telecommunication operators hence increasing financial hardship on consumers

On the other hand the advertisement through consumer cell phones has become nuisance to consumers. The advertisement always comes in the form of short messages, they are sent anytime even at night where most of consumers are asleep. Some of the telecommunication operators have gone as far as to making the adverts caller tunes for their customers without consulting/asking the consumer consents. Makwaia wa Kuhenga a famous writer also noted this nuisance hence wrote his opinion in the famous Tanzania Newspaper The Citizen of Monday 4<sup>th</sup> April, 2011.

## **CHAPTER FIVE**

### **5.0 RECOMMENDATIONS AND CONCLUSION**

The study assessed consumer protection in the telecommunication laws, policy and regulations, the shortcomings in the said laws policy and regulations and the implication of the shortcomings in the said laws, policy and regulations. Generally the findings indicate that there are shortcomings in the existing laws, policy and regulations as far as the issue of consumer protection in the telecommunication sector is concerned. After a thorough analysis of the findings below are the recommendations from the researcher.

#### **5.1 Recommendations**

As per the research findings the following recommendations are proposed on how to improve the consumer protection in the Tanzania Telecommunication sector:

- i) Policies, laws and regulations guiding the telecommunication should not only aim at promoting broad, reliable efficient provisions of telecommunications service in the country to international standard but also take into account the issue of consumer protection as it can be seen in Australia where there is Telecommunication (Consumer Protection and Service Standards) Act, 1999 which aim only at protecting telecommunication consumers.
- ii) Though there are several laws which protect telecommunication consumers in Tanzania, these alone are not enough. Extra measures and efforts need to be

exerted so as to come up with system of protecting telecommunication consumers.

- iii) Though TCRA has tried to educate the telecommunication consumers in the telecommunication sector but still many of these consumers in Tanzania do not recognize their statutory rights hence it is difficult for them to institute civil proceedings when their rights are violated. There should be introduced more mechanisms of education to consumers so as to increase awareness on their statutory rights as consumers.
- iv) Apart from the sectoral regulatory laws, the government should enact one law that will deal with consumer protection in general.
- v) The laws enacted to protect telecommunication consumers should be flexible to change from time to time, this is because technology change fast and so should the law be able to change fast to suit the technological changes so as to efficiently protect consumers. There should be introduced mechanism of changing the laws fast to suit the technological changes.
- vi) Due to globalization, there is growth of cross boarder trading and foreign direct investment by transnational cooperation. International cooperation is essential economic development however the engagement in International

commerce should go hand in hand with consumer protection. Thus government is hereby encouraged to ratify the International instruments which will protect consumers. International cooperation is necessary. Different countries have signed bilateral and tripartite agreements for the proper protection of there consumer within the region. Anti consumer protection behaviors will have adverse effects to consumers if there is no multinational cooperation.

- vii) There should be established an independent body for consumer protection in telecommunication sector which will not be funded on depend on TCRA.
- viii) Also like United Kingdom which has dispute procedure schemes, there should also be introduced in Tanzania a mechanism to ensure that every service provider provides access to satisfactory dispute procedure scheme to their domestic and small business customers.
- ix) Also there should be introduced special agencies or government bodies to monitor the implementation of the laws, policy and regulations and to watch on international relations and trade towards consumers.

## **5.2 Conclusion**

The findings reveal that the existing laws, policy and regulations have shortcomings which telecommunication regulators in Tanzania take advantage of. Because of that the

consumers in the telecommunication sector end are the one who carry the burden of the shortcomings in the laws, policy and regulations.

Mahatma Gandhi<sup>118</sup> once said ‘A customer is the most important visitor on our premises. He is not dependant on us. We are dependent on him. He is not an outsider in our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so.’ However this has not been the case for the telecommunication customers in Tanzania as the laws protecting them have left the lacunas which makes them as if they are favoured while that is not the case.

The study only covered a small sample population that is the TCRA which is the regulatory authority, more study is required to look on consumer protection from the public perspective and the operators’ perspective on how telecommunication operators protect the telecommunication consumers and how the telecommunication consumers perceive the issue of consumer protection in the telecommunication sector. Also further study should be done on the issue of telecommunication dispute mechanism in relation to consumer protection in the telecommunication sector.

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<sup>118</sup> [www.woopidoo.com/business\\_quotes/authors/mahatma-gandhi/index.htm](http://www.woopidoo.com/business_quotes/authors/mahatma-gandhi/index.htm)

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## APPENDICES

### APPENDIX 1: QUESTIONNAIRE

#### A. INTRODUCTION

Dear Respondent,  
May I introduce myself.

My name is Consolatha Moringi Resto. I am a student at Open University of Tanzania pursuing Masters of Law Degree in Information Technology and Telecommunications. Part of the course requirement is to conduct a research and write a report thereafter on a selected topic and in my case the topic is ***“Consumer Protection under the Telecommunication Laws, Policy and Regulations: Case study of Tanzania Communications Regulatory Authority”***.

The research involves collection of data (information) from the right people hence my approach to you. I will be grateful if you will assist me by answering questions here in below. All information is strictly for my study purpose only.

#### B. RESPONDENT’S PARTICULARS

*(Write ‘A’, ‘B’ or ‘C’ in the box to indicate your answer)*

1. Respondent’s gender

- a) Male (    )
- b) Female

3. Respondent’s work department

- a) Legal department (    )
- b) Consumer Affairs Unit
- c) Other, Please specify\_\_\_\_\_

4. Respondent’s work position

- a) Manager (    )
- b) Supervisor
- c) Officer
- d) Other, Please specify \_\_\_\_\_

**C: QUESTIONS**

*(Write 'A', 'B' or 'C' in the box to indicate your answer)*

1.0 Do you know anything about consumer protection in Telecommunication sector?

- a) Yes ( )
- b) No

2.0 If the answer to the question 1.0 above is yes, how much do you know about consumer protection in telecommunication sector?

- a) Know everything about consumer protection in telecommunication sector.
- b) Have average knowledge about consumer protection in telecommunication sector.
- c) Have little knowledge about consumer protection in telecommunication sector. ( )

3.0 Have you heard of Tanzania Telecommunication Laws and Regulations on consumer protection?

- a) Yes ( )
- b) No

4.0 Do the existing Tanzania Telecommunication Laws and Regulations satisfy the requirements of consumer protection in the Telecommunication Sector in Tanzania?

- a) Yes
- b) No ( )
- c) Partly satisfies

*(If the answer to question 4.0, above is yes answer question 4.1 below then continue to question 5.0)*

4.1 Why do you think the existing Tanzania telecommunications Laws and regulations satisfy the requirements of consumer protection in the telecommunication sector in Tanzania?

- a) Because they contain some provisions of law which are sufficient to protect Telecommunication consumers
- b) Because they meet all the requirements for consumer protection ( )

*(If the answer to the question 4.0 above is not or partly satisfies answer the questions 4.2 below then continue to question 5.0)*

4.2 Why do you think the existing telecommunications Laws and regulation do not or partly satisfy the requirements of consumer protection in the telecommunication sector in Tanzania?

- a) Because they do not contain provisions of law which protect consumers
- b) Because the provision of law which protect the consumers are very few and have shortcomings ( )

5.0 Does the existing Tanzania National Telecommunication Policy of 1997 satisfy the requirements of consumer protection in the Telecommunication Sector in Tanzania?

- a) Yes ( )
- b) No
- c) Partly satisfies

*(If the answer to question 5.0, above is yes answer question 5.1 below then continue to question 6.0)*

5.1 Why do you think the existing Tanzania National Telecommunication Policy of 1997 satisfy the requirements of consumer protection in the telecommunication sector in Tanzania?

- a) Because it contains few elements which are sufficient to protect Telecommunication consumers.
- b) Because it meets all the requirements for consumer protection. ( )

*(If the answer to the question 5.0 above is no or partly satisfies answer the question 5.2 below then continue to question 6.0)*

5.2 Why do you think the existing Tanzania National Telecommunications Policy of 1997 does not or partly satisfy the requirements of consumer protection in the Telecommunication sector in Tanzania?

- a) Because it does not have any elements of consumer protection.
- b) Because elements of consumer protection are not sufficient to protect Telecommunications consumers.
- c) Because the policy is just a guideline and a framework for the sector it does not have to contain requirements of consumer protection. ( )

6.0 Does the existing Tanzania National Information and Communications Technology Policy of 2003 satisfy the requirements of consumer protection in the Telecommunication Sector?

- a) Yes ( )
- b) No
- c) Partly satisfies

*(If the answer to question 6.0, above is yes answer question 6.1 below then continue to question 6.0)*

6.1 Why do you think the existing Tanzania National Information and Communication Technology Policy of 2003 satisfy the requirements of consumer protection in the telecommunication sector in Tanzania?

- a) Because it contains few elements for consumer protection which are enough to protect Telecommunication consumers.
- b) Because it meets all the requirements for consumer protection which protects telecommunications consumers. ( )

*(If the answer to the question 6.0 above is no or partly satisfy answer the questions 6.2 below then continue to question 7.0)*

6.2 Why do you think the existing Tanzania National Information and Communication Technology Policy of 2003 does not or partly satisfy the requirements of consumer protection in the telecommunication sector in Tanzania?

- a) Because it does not have any elements for telecommunication consumer protection in it.
- b) Because elements for consumer protection are not sufficient to protect Telecommunications consumers.
- c) Because the policy is just a guideline and a framework for the sector it does not have to contain requirements for consumer protection. ( )

7.0 Do you agree with the frequently advertising system through short messages sent to the consumers cell phones which leads to nuisance as used by the telecommunication operators is the result of the shortcomings in the existing telecommunication laws, policy or regulations?

- a) Yes ( )
- b) No

*(If the answer to the above question 7.0 above is no, answer question 7.1 below, if the answer to question 7.0 above is yes, answer question 7.2)*

7.1 If yes, why?

- a) Because the telecommunication laws, policy and regulations are silent on the said issue.
- b) Because there are existing loopholes in either the laws, policy or regulations which the telecommunication operators take advantage of. ( )

7.2 If no, why?

- a) Because the frequently adverts by the telecommunication operators is a way of reminding the consumer about the products offered by the operators.
  - b) Because there is no need for either the law, policy or regulation to prohibit adverts as they do not have large impact on the consumers.
- (    )

8.0 Do you think the system of billing the telecommunication consumers when the consumers want to make inquiry or report their problem to their telecommunication operators/service providers is a result of the shortcomings in the existing telecommunication laws, policy or regulations?

- a) Yes (    )
- b) No

*(If the answer to the above question 8.0 above is yes, answer question 8.1 below, if the answer to question 8.0 above is no, answer question 8.2)*

8.1 If yes, why?

- a) Because the telecommunication law, policy and regulation are silent on the said issue.
  - b) Because there are existing loopholes in either the laws, policy or regulations which telecommunication operators take advantage of.
- (    )

8.2 If no, why?

- a) Because the billing system is a way of controlling the consumers from frequently calling the costumer care units of the telecommunication operators when they want to report their problem. (    )
- b) Because there is no need for either the law, policy or regulation to prohibit adverts as they do not have a large impact on the consumers.

9.0 Do you think due to lack of enough provisions and elements of consumer protection in the telecommunication laws, policy and regulations, the consumers end up carrying the burden of the shortcomings in the said laws, policy and regulation?

- a) Yes (    )
- b) No

9.1 If yes, how many complains of this nature have you received so far?

- a) 1-100 (    )
- b) 100 and above

9.2 What do you recommend should be done to overcome the shortcomings if there are any?

- a) Amend the existing laws, policy and regulations and make binding rules to cover the said shortcomings.
  - b) Leave the said laws, policy and regulations as they are because the said shortcomings do not have large impact to the consumers.
- (     )

END

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## APPENDIX 2: NEWS PAPERS ARTICLE ON NUISANCE PROMOS

THE CITIZEN Monday, 4 April 2011

opinion &amp; analysis 9

## Tanzania's cellular firms: Those nuisance promos!



Makwinda wa Kulehanga

## ▶ MY CONSCIENCE

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Reading these lines must be making quite an interesting flash back of the past and present today in terms of communication. I am sure they have not thrown away their typewriters whether desk top or portable ones because they may be useful as training tools for their children when they are eventually introduced to computers because the typewriter's keyboard does not differ fundamentally with that of the computer.

Now talking of the mobile phone and its convenience in this country, one must be talking about the convenience it has made quite a difference if we are to travel through the time legendary story. One may remember that in the old days the only people seen running around with gadgets on their heads and communicating with each other were policemen with their walkie-talkies!

But it was free for all upon the minutes – with the birth of the cellular industry in this country. The early carrier here was a company that is said to

have originated from the United States. It hit ground with the trade name MOBITELE. So "mobile" became the catchword for a mobile phone handset. The technology in use by this cellular company, whether analogue or digital, mattered little for the early subscribers of this mobile phone company. "Mobile" To begin, what mattered was to make or receive a call.

Because of the novelty that one can talk and make a call anywhere, the price tag attached to this service also mattered little when one was required to pay for an incoming call. You can therefore imagine how much money this company was able to make being the first service provider in this country.

Soon, there were several more companies registering to provide this service in this country. Today one counts not less than eight cellular companies operating in this country. The question is: To what level and extent were these companies regulated especially the entry arrivals in terms of price

tags for their services? To what level was the public protected from paying through their noses on a service which was becoming increasingly expensive as compared to commodities in the developed world?

The fact of the matter is that I may respond to the latter question was that there was none or little production because of the

and deregister businesses is explained in the fact that names of companies from hotels to cellular companies change immediately after the five-year grace period of tax holidays comes to an end for reasons of civility. I will not mention the name of hotels and cellular companies which have changed names over the

It is the factor of promotional overall which is becoming a nuisance to subscribers of these services especially the major ones



neo-liberal character of the Tanzanian state which has been hounded from regulating and oversteering the running of the economy at the behest of the big boys of this world who matter. This factor, coupled with rampant corruption has further compounded the plight of the ordinary man and woman in the country.

Corruption by those whose bread it is to regulate and register

Instead of an immediate computerized response that a given number is engaged or is switched off, one is confronted with too many words such as: "Ukilewa na..." (name of the mobile phone company) "Pitahini mizu shilingi alia wote..." (Simu ya mteja unavyopigwa hapafikiani, "which translates for "when you are a subscriber of... enjoy/half... shilling the whole day after the first minute. The number you are calling is not reachable...")

Alternatively, one is subjected to an answer back, "nimepokea" which involves one to press some key on the handset if one is interested in the time but only to be told the number one you are dialing is not reachable or switched off!

Rid Bwagat Why this hassle? Assuming the caller is a resident of this country and has just brought a service line and such things are in Kimsabili, won't the caller believe that it is actually the person he/she wants taking the call at the other end of the line?

But aren't such things a nuisance and a time waster for all subscribers?

Makwinda wa Kulehanga is a senior journalist & author.

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